

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-1433

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United States Court of Appeals
FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

WILLIAM I. STRUB, RAMON N. D'ONOFRIO,
GEORGE C. VAN AKEN, ALFRED HERBERT,
PETER B. ROSENTHAL,
Defendants,

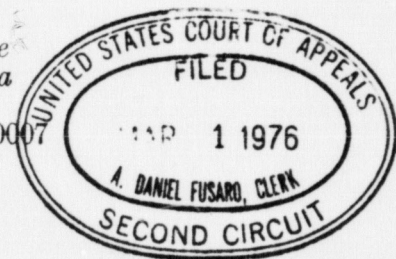
GEORGE C. VAN AKEN,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

THE UNITED STATES

v.

WILLIAM I. STRUB
RAMON N. D'ONOFRIO
GEORGE C. VAN AKEN
ALFRED HERBERT
PETER B. ROSENTHAL

73 Cr. 654 - Tyler, J.

For George C. Van Aken

Michael W. O'Sullivan, Esq.
Brady, Tarpey, Downey, Hoey, P.C.
84 William Street
New York, New York 10038
212-269-1010

PROCEEDINGS

Date

7-9-73	Filed Indictment - B/W ordered - Indictment ordered sealed - Stewart, J. - B/W's issued.
7-10-73	Indictment ordered unsealed. - Stewart, J.
7-11-73	Deft. (Atty. present - Legal Aid Mr. Mogul) RAMON D'ONOFRIO pleads guilty to count 1 only. Deft. D'Onofrio ordered photographed and fingerprinted. Bail continued at \$100,000, as set by Magistrate. Sentence adj. to 9-11-73. Case assigned to Judge Tyler as a related matter (72 CR 1221) -- Stewart, J.
7-12-73	D'Onofrio - Filed acknowledgment of constitutional rights.

- 7-23-73 Deft. Strub (atty present) pleads Not Guilty. Bail cont'd \$25,000. personal recognizance bond and \$5000 surety. Bail limits notify U.S. Atty 48 hours before leaving country. 10 days for motions.
- Deft. A. Herbert - Bench warrant to be issued.
- Deft. S.C. Van Aken (atty present) pleads not guilty. Released on own recognizance. 10 days for motions to be fingerprinted & photographed.
- Deft. R.N. D'Onofrio - adj'd for 1 week before Tyler, J.
- Deft. P.R. Rosenthal (atty present) pleads not guilty. Released on own recognizance, to be fingerprinted & photographed. Case referred to Judge Tyler, J. Ward, J.
- 7-23-73 Deft. A. Herbert. Bench warrant to be issued. Ward, J.
- 7-21-73 GEO. VAN AKEN - filed notice of appearance of atty by Peter H. Morrison, by: Benjamin Zelermyer, 110 E. 59th St., NYC 593-0100
- 7-21-73 WM. I. STRUB - filed notice of appearance of atty by Nathan Zausner, 77 School St., Glen Cove, L.I. 526-676-7000
- 8-7-73 Filed Stip and Order that the time for service of any motion papers addressed to the indictment herein, is hereby ext. to 8-31-73. Tyler, J.
- 8-22-73 Filed orig. papers filed with Mag. Raby: docket entry sheet, indictment warrant, S.D.N.Y., disposition sheet, notice of appearance & appearance bond.
- 8-22-73 PETER B. ROSENTHAL - filed notice of appearance by atty: Atty's tele #371-3900
Zissu, Lore, Halper & Robson by Morton Skobson, 450 Park Ave., NYC
- 10-3-73 Filed Stip & Order that the time for service of any

motion papers addressed to the indictment is ext.
to 10-17-73. TYLER, J.

- 9-14-73 Pre-trial conference held. Deft. Peter B. Rosenthal (atty present) severed from the trial of this case at this time. All motions returnable on 9-28-73. Tyler, J.
- 11-1-73 Deft. William I. Strub (atty present) withdraws plea of not guilty and pleads guilty to count #5 only. Pre-sentence investigation ordered. Sentence adjourned to 12-14-73 at 2:15 PM. Bail cont'd. Tyler, J.
- 12-14-73 WILLIAM I. STRUB - (atty present) Filed JUDGMENT - It is adjudged that the deft. is placed in the custody of the Atty General for imprisonment for a period of TWO (2) YEARS. Execution of the prison sentence is SUSPENDED and the deft is placed on probation for a period of THREE (3) YEARS subject to the standing probation order of this court and subject to the SPECIAL CONDITION that the deft continue to cooperate with the United States Atty's Office and the S.E.C. - AND - The deft is FINED TEN THOUSAND (\$10,000) DOLLARS. Fine is to be paid within one year from today on a schedule to be arranged with the Probation Department, or the deft is to be CONFINED until the fine is paid or he is otherwise discharged according to law. Open counts 1, 2, 3, 4, 6, 7 & 8 are dismissed on motion of deft's counsel with the consent of the Govt. Tyler, J. mn
- 1-31-74 Filed transcript of record of proceedings, dated 11/1/73
- 3-25-74 Filed ORDER: THAT the action is transferred to the Suspense Docket. Tyler, J.
- 5-3-74 R. D'Onofrio - filed warrant for arrest - returned executed
- 7-2-74 Filed CONSENT ORDER that the deft Peter B. Rosenthal is granted leave to depart the jurisdiction of this court on 7/8/74 to proceed to Guatemala City, Guatemala for business, etc. and return on

7/29/74, etc. Tyler, J.

- 10-17-74 Deft George C. Van Aken (atty present) withdraws plea of not guilty and pleads guilty to counts 1. Bail continued. Pre-sentence report ordered. Sentence adjourned sine die. Tyler, J.
- 11-8-74 RAMON N. D'ONOFRIO (atty present) Filed Judgment - the imposition of sentence on count 1 is suspended. Deft is placed on probation for a period of FIVE (5) YEARS, to be served concurrently with the probation imposed on 72 Cr. 1221, but consecutively to and after all sentences heretofore imposed, subject to the standing probation order of this court. Special conditions of probation being that the deft shall pay the fine imposed in 73 Cr. 192 and deft shall not engage in the U.S. as an officer, director, agent or other fiduciary in the discretionary investment or management of the funds or assets of others, and shall not directly or indirectly deal in the U.S. In any publicly traded securities without the prior consent in writing of his probation officer. Counts 2 thru 5 and 8 are dismissed on motion of deft's counsel with consent of the Govt. Brieant, J.
issued copies. ent. 11/12/74
- 11-8-74 Filed Order that the deft Ramon N. D'Onofrio's time to surrender to the Atty Gen'l is 11/12/74. Eglin Air Force Base, Fla. at 10 A.M. Brieant, J.
- 12-17-74 Filed transcript of record of proceedings, dated Oct. 17, 1974.
- 12-19-74 Wm. Strub - Judgment #74,145 fine marked satisfied & entered in money judgment book
- 4-23-75 Filed deft G. Van Aken's notice of motion for leave to withdraw atty.
- 5-01-75 Filed memo end. on motion docketed 4-23-75. It appearing that deft Van Aken does not consent. Motion denied. Bonsal, J. mn
- 5-15-75 GEORGE VAN AKEN (atty present) Filed JUDGMENT

#75,470 deft is committed to the custody of the Atty Gen'l for imprisonment for a period of THREE (3) YEARS on count 1, to run concurrently with sentence imposed on 74 Cr. 1226 AND deft is FINED \$10,000 on count 1. Fine is to be paid or the deft is to stand committed until the fine is paid or he is otherwise discharged according to law. Counts 2 thru 5 and 8 are dismissed on motion of deft's counsel with consent of the Govt. Deft cont'd on present bail until 5-28-75 at which time he is to surrender for service of sentence. Bonsal, J. issued all copies.

5-28-75	Filed commitment & entered return. Deft delivered to (deft G. Van Aken) F.P.C. Florida 6-6-75.
6-3-75	Filed Govt's affdvt re: opposition to rule 35 motion (G. Van Aken) (also 74 Cr. 1226 DBB)
6-3-75	Filed memo on motion docketed this date. Motion granted. Bonsal, J. mn
10-21-74	Strub 1500 -
10-22-74	Treas 1500 -
11-20-74	Strub 1000 -
11-21-74	Treas 1000 -
12-16-74	Strub 3000 -
12-17-74	Treas 3000 - (Paid in full)
12-4-75	Filed sur reply affdvt of Michael W. O'Sullivan (orig. filed in 74 Cr. 1226 DBB)
12-4-75	Filed memo of law in support of sur eply affdvt (orig. filed in 74 Cr. 1226 DBB)
12-11-75	Filed memo-end. on motion docketed 11-12-75. . . . Accordingly, G. Van Aken's motion to vacate and/or set aside the judgments of conviction and sentence is denied. Bonsal, J. m/n also in 74 Cr. 1226 DBB

12-19-75 Filed deft G. Van Aken's notice of appeal from
memo-end. on motion denying motion to vacate sen-
tence, etc. mailed notices

1-30-76 Filed notice that the record on appeal has been
certified and transmitted to the U.S.C.A.

DOCKET ENTRIES

THE UNITED STATES

vs.

ROBIN G. BARON
ERIC BLITZ
WILLIAM DREW
ERWIN GERSTENZANG
STEPHEN R. HILL
PETER HORVAT
FRANK KADISON
WILLIAM McLEOD
RICHARD G. ORPHEUS
ROBERT J. ROSAN
PETER B. ROSENTHAL
BARRY M. ROSS
JOHN J. SANTIAGO,
a/k/a "Sonny Santini"
ROBERT TURCO,
a/k/a Frank Bruno
GEORGE C. VAN AKEN

74 CR 1226 S - Bonsal, J.

For George C. Van Aken

Michael W. O'Sullivan, Esq.
Brady, Tarpey, Downey, Hoey, P.C.
84 William Street
New York, New York 10038
212-269-1010

PROCEEDINGS

Date

12-31-74 Filed indictment. B/W's ordered as to deft's Robert

Turco & Kadison Frank. B/W's issued. Grisea, J.

- 1-3-75 Deft. Kadison appears (no atty.) court directs a plea of not guilty be entered, 10 days for motions. Bail continued as previously fixed by the Magistrate at \$10,000 personal recognizance bond secured by \$1,000 cash. Deft. Turco appears (atty. present) pleads not guilty. 10 days for motions. Bail set at \$10,000 Personal recognizance bond secured by \$1,000. Deft. fingerprinted and photographed. Griesa, J. Case assigned to Bonsal, J. as a superseding indictment, 74-cr-798.
- 1-3-75 Filed appearance bond for deft. Frank Kadison in the sum of \$10,000.
- 1-3-75 Filed appearance bond for Robert Turco in the sum of \$10,000.
- 1-6-75 Filed Govt.'s bill of particulars.
- 1-9-75 Filed deft. Eric Blitz's suppl. affdvt. in support of motion for severance.
- 1-13-75 Filed (R. Turco) warrant for arrest of deft. and return, executed on 1/2/75 by arresting R. Turco on 1/3/75 at the U.S. Courthouse room 301B.
- 1-20-75 Filed deft. R. Rosan's notice of motion re: severance and dismissal of count 1 of the indictment.
- 1-20-75 Filed deft. R. Rosan's memo. of law in support of motion for severance & dismissal of count 1.
- 1-22-75 Wm. McLeod - filed deft.'s acknowledgment of constitutional rights.
- 1-22-75 S. Hill - filed deft.'s acknowledgment of constitutional rights.
- 1-22-75 J. Santiago - filed deft.'s acknowledgment of constitutional rights.
- 1-24-75 Filed Govt.'s affdvt. re: inspection of personal property of G. Van Aken.

- 1-27-75 Filed memo-end. on motion of R. Rosan for severance, etc. denied. Bondal, J.
- 1-14-75 Deft. Stephen R. Hill (atty. Barry Feiner present) pleads guilty to Ct. 1 only. P.S.I. ordered. Date for sentence 3/20/75. Deft. cont'd. present bail. Remaining counts opened. Bonsal, J.
- 1-14-75 Deft. William McLeod (atty. Edward Panzer present) pleads guilty to count 1 only. P.S.I. ordered. Date sentence 3/3/75. Deft. cont'd on bail. Remaining counts opened. Bonsal, J.
- 1-14-75 Deft. Peter B. Rosenthal (atty. Morton Robson present) pleads guilty to count 1 only. P.S.I. ordered. Date for sentence 3/3/75. Deft. cont'd on bail. Remaining counts opened. Bonsal, J.
- 1-14-75 Deft. John J. Santiago (atty. Stuart Holztman present) pleads guilty to count 1 only. P.S.I. ordered. Date for sentence 3/3/75. Deft. cont'd on bail. Remaining counts opened. Bonsal, J.
- 1-14-75 Deft. George C. Van Aken (atty. Richard Williamson present) pleads guilty to count 1 only. P.S.I. ordered. Date for sentence 3/3/75. Deft. cont'd on bail. Remaining counts opened. Bonsal, J.
- 1-24-75 Deft. Robin Baron (atty. Norman Horwitz present) pleads guilty to count 2. Presentence report ordered. 3/20/75 Set for sentence. Bail cont'd. Bonsal, J.
- 1-24-75 Deft. Erwin Gerstenzang (atty. Robert Mitchell present) pleads guilty to count 1. P.S. report ordered. 3/20/75. Set for sentence. Bail cont'd. Bonsal, J.
- 1-24-75 Deft. Barry Ross (atty. Thomas Fitzpartrick present) pleads guilty to count 1. P.S. report ordered. Bail cont'd. 3/20/75 set for sentence. Bonsal, J.
- 1-27-75 Jury empanelled. Trial begun as to defts. Blitz, Drew, Horvat, Orpheus, Rosan. Bonsal, J.

1-28-75	Trial cont'd.
1-29-75	Trial cont'd.
2-3-75	Trial cont'd.
2-4-75	Trial cont'd.
2-5-75	Trial cont'd.
2-6-75	Trial cont'd.
2-7-75	Trial cont'd.
2-10-75	Trial cont'd.
2-13-75	Trial cont'd.
2-14-75	Trial cont'd.
2-18-75	Trial cont'd.
2-19-75	Trial cont'd.
2-20-75	Trial cont'd.
2-21-75	Trial cont'd.
2-24-75	Trial cont'd.
2-25-75	Trial cont'd.
2-26-75	Trial cont'd.
2-27-75	Trial cont'd.
2-28-75	Trial cont'd.
3-3-75	Trial cont'd. Count 1 dismissed, Blitz ct. 2 - 6 dismissed Drew, Blitz, Horwat, Orpheus, Rosan.
3-4-75	Trial cont'd. and concluded. Deft. Blitz guilty ct. 19 acquitted cts. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18. Deft. Drew guilty cts. 1, 7, 8, 9, 10, 11, 12, 13 acquitted cts. 14, 15, 16, 17 & 18.

Deft. Horvat guilty cts. 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18. Deft. Rosan acquitted cts. 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18. Deft. Orpheus guilty cts. 1, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18. Discharged. Jury polled. Presentence reports ordered. April 21, 1975 set for sentence. Bail cont'd. Bonsal, J.

- 3-6-75 Filed affdvt. of Philip T. Feiring re: affirmation filed following hearing held on 1/15/75.
- 3-7-75 Filed transcript of record of proceedings, dated Jan. 15, 16, 1975.
- 3-7-75 Filed transcript of record of proceedings, dated Jan. 20, 1975.
- 3-7-75 Filed transcript of record of proceedings, dated Jan. 21, 1975.
- 3-7-75 Filed transcript of record of proceedings, dated Jan. 24, 1975.
- 3-19-75 Filed Govt.'s sentencing memorandum.
- 3-19-75 Filed Govt.'s notice of readiness for trial (defts. R. Turco F. Kadison) (1) docket entry sheet (2) indictment warrnat (3) disposition sheet (4) appearance bond.
- 3-28-75 Filed transcript of record of proceedings, dated 1/14/75.
- 4-2-75 Filed transcript of record of proceedings, dated 2/5-6-7-10/75.
- 4-2-75 Filed transcript of record of proceedings, dated 2/11-13-14-18-19/75.
- 4-2-75 Filed transcript of record of proceedings, dated 2/20-21-24-25/75.
- 4-2-75 Filed transcript of record of proceedings, dated 2/26-27-28/75 - 3/3-4/75.

4-2-75 Filed transcript of record of proceedings, dated 1/27-29/75 - 2/3-4/75.

4-9-75 Filed Govt.'s suppl. sentencing memorandum.

4-14-75 Filed deft. Orpheus' notice of motions for judgment of acquittal and dismissal ret. 4-21-75.

4-14-75 Filed deft. Blitz's notice of motion re: new trial.

4-14-75 Filed deft. Blitz's memo. of law re: support motion for new trial.

4-15-75 Filed deft. Horvat's notice of motion re: judgment of acquittal/new trial.

4-15-75 Filed deft. Horvat's memo. of law in support of motion for judgment of acquittal/new trial.

4-21-75 Wm. Drew filed CJA 20 appointment of H. Elliot Wales and approval for payment of fees of atty. Bonsal, J. issued copies CJA Clerk.

4-23-75 Filed transcript of record of proceedings, dated 1-9-75.

4-23-75 Filed deft. G. Van Aken's notice of motion for leave to withdraw and supporting affdvt.

4-23-75 Filed Govt.'s affdvt. re: opposition to motions of E. Blitz, R. Orpheus & P. Horvat for new trial, judgment of acquittal, etc.

4-23-75 Filed Govt.'s memo. of law re: opposition to motions, etc.

4-30-75 Filed Govt.'s sentencing memorandum (G. Van Aken).

5-1-75 Filed memo-end. on motion docketed 4-23-75. It appearing that deft. Van Aken does not conset. Motion denied. Bonsal, J.

5-19-75 Filed deft. G. Van Aken's notice of motion for leave to withdraw and supporting affdvts. of atty, etc. #75,471

- 5-15-75 Filed JUDGMENT-GOERGE VAN AKEN (atty. present) deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period OF THREE (3) YEARS on count 1, to run concurrently with sentence imposed on 73 Cr. 654. AND deft. is FINED \$10,000 on count k. Fine is to be paid or the deft. is to stand committed until the fine is paid or he is otherwise discharged according to law. Counts 2 thru 18 are dismissed on motion of deft.'s counsel with consent of the Govt. Deft. cont'd on present bail until 5-28-75 at which time he is to surrender for service of sentence Bonsal, J. issued all copies. Bonsal, J.
- 5-23-75 R. Orpheua - filed unsecured personal recognizance bond pending appeal in the sum of \$10,000.
- 5-23-75 W. Drew - filed unsecured personal recognizance bond pending appeal in the sum of \$50,000.
- 5-28-75 Wm. Drew - filed notice of appeal from judgment of conviction. Mailed copies.
- 5-22-75 STEPHEN R. HILL (atty. present) Filed JUDGMENT #75,485 - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR on count 1 and FINED \$5,000. Fine is to be paid or he is otherwise discharged accordingly to law. Deft. is cont'd. on present bail until 6-22-75 at which time he is to surrender for service of sentence. Bonsal, J. issued all copies.
- 5-22-75 WILLIAM McLEOD (atty. present) Filed JUDGMENT - deft. is committed to custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR on count 1. Execution of sentence is suspended. Deft. is placed on Probation for a period of TWO (2) YEARS, subject to the standing probation order of this Court. Counts 2 through 18 are dismissed on motion of deft.'s counsel with consent of the Govt. Bonsal, J. issued all copies.
- 5-22-75 BARRY M. ROSS (atty. present) Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR on count

1 pursuant to Section 3651 of T. 18, U.S. Code, as amended, with provision that the deft. be confined in a JAIL type institution for a period of THREE (3) MONTHS as provided in the aforesaid section. Execution of the remainder of the sentence is suspended and the deft. is placed on probation for a period of TWO (2) YEARS, to commence upon expiration of confinement, subject to the standing probation order of this Court. Counts 2 thru 18, 20, 22 thru 25 are dismissed on motion of deft.'s counsel with consent of the Govt. Deft. is continued on present bail until 6-12-75 at which time he is to surrender for service of sentence. Bonsal, J. issued all copies.

- 5-22-75 ERWIN GERSTENZANG (atty. present) Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l. for imprisonment. Imposition of sentence on count 1 is suspended. Def. is placed on probation for a period of ONE (1) YEAR, subject to the standing probation order of this Court. Counts 2 thru 18 are dismissed on motion of deft.'s counsel with consent of the Govt. Bonsal, J. issued all copies.
- 5-22-75 RICHARD G. ORPHEUS (atty. present) Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l. for a period of THREE (3) MONTHS on count 1. Imposition of sentence on counts 7 thru 18 is suspended. Deft. is placed on probation for a period of TWO (2) YEARS, to commence upon expiration of confinement imposed on count 1, subject to the standing probation order of this Court. Bail pending appeal fixed in the amount of \$10,000. Court recommends that the deft. continue methadone treatment during his period of confinement. Bonsal, J. issued all copies.
- 5-22-75 WILLIAM DREW (atty. present) Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of SIX (6) MONTHS on count 1. ONE (1) YEAR on each of counts 7 thru 13. Execution of sentence on counts 7 thru 13 is suspended. Deft. is placed on probation for a period of TWO (2) YEARS, to commence upon expiration of

confinement imposed on count 1, subject to the standing probation order of this Court. Bail pending appeal fixed in the amount of \$50,000. Personal Recognizance Bond. Bonsal, J. issued all copies.

- 6-3-75 Filed Govt.'s affdvt. re: opposition to deft. G. Van Aken's motion for reduction of sentence. (also 73 Cr. 654).
- 6-2-75 Filed memo-end. on motion docketed 4-14-75. Motion denied. Bonsal, J. (also in 74 Cr. 798).
- 6-2-75 Filed Stip. & Order that the firm of La Rossa, Shargel & Fischetti be substituted as attys. of record for S. Hill. Bonsal, J.
- 6-3-75 Filed Deft. Richard G. Orpheus' notice of appeal from judgment of 5-23-75. Mailed copies.
- 5-28-75 ROBIN C. BARON - Filed JUDGMENT # - deft. is committed to the custody of the Atty. Gen'l for imprisonment for a period of NINE (9) MONTH on count 2 and FINED \$5,000 on count 2. Fine is to be paid or the deft. is to stand committed until the fine is paid or he is otherwise discharge according to law. Counts 1 and 3 thru 18 are dismissed on motion of deft.'s counsel with the consent of the Govt. Deft. is cont'd. on present bail until 6-11-75 at which time he is to surrender for service of sentence. Bonsal, J. issued all copies.
- 5-29-75 ERIC BLITZ - Filed JUDGMENT # - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR and FINED \$5,000 on count 19. Fine is to be paid or the deft. is to stand committed until the fine is paid or he is otherwise discharged according to law. Bail pending appeal fixed in the amount of \$25,000. P.R.B. Deft. is to surrender in Tacoma, Wash. Sentence is stayed pending prompt prosecution of appeal. Bonsal, J. issued all copies.
- 5-29-75 JOHN J. SANTIAGO - Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l for

imprisonment for a period of ONE (1) YEAR on count 1 pursuant to Section 3651 of Title 18, U.S. Code as amended, with provision that the deft. be confined in a JAIL tupe institution for a period of SIX (6) MONTHS as provided in the aforesaid section. Execution of the remainder of the sentence is suspended and the deft. is placed on probation for a period of TWO (2) YEARS, to commence upon expiration of confinement, subject to the standing probation order of this Court. Counts 2 thru 18 are dismissed on motion of deft.'s counsel with consent of the Govt. Deft. is continued on present bail until 6-30-75 at which time he is to surrender for service of sentence. Bonsal, J. issued all copies.

- 6-3-75 Filed memo-end. on motion docketed 5-19-75 - motion granted. Bonsal, J.
- 6-5-75 Filed deft. G. Van Aken motion re: vacate sentence, appoint counsel, etc.
- 6-5-75 Filed memo-end. on motion docketed this date. Accordingly, deft.'s motion to vacate or reduce his sentence is denied. Deft.'s motion for appointment of counsel at resentencing is also denied. Bonsal, J.
- 6-6-75 Filed deft. John J. Santiago's notice of appeal from judgment of 5-29-75. Mailed copies.
- 6-6-75 Filed deft. Eric Blitz's notice of appeal from judgment of conviction. Mailed copies.
- 6-6-75 Filed deft. Eric Blitz's notice of appeal from judgment of 6-6-75. Mailed copies.
- 6-9-75 Filed Govt.'s suppl. sentencing memorandum.
- 6-10-75 Filed deft.'s (Stephen Hill) notice of motion re: reduction of sentence. ret. 6-12-75.
- 6-11-75 Filed ORDER TO SHOW CAUSE - re: order setting aside judgment of conviction of deft. Robin Baron, etc. ret: 6-16-75. Bonsal, J.

- 6-11-75 Filed MEMO-END. on motion docketed 6-10-75. Deft. Hill's surrender date adjourned to 6-19-75 at 10:30 a.m. room 506. Bonsal, J.
- 6-11-75 E. Gerstenzang - filed CJA 20 approval for payment of fees of atty. Mailed copies CJA Clerk. Bonsal, J. (also 74 Cr. 798).
- 6-13-75 Filed G. Van Aken's notice of appeal from order of 6-5-75 denying reduction of sentence. Mailed copies. #75,534
- 6-9-75 PETER B. ROSENTHAL (atty. present) Filed JUDGMENT - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of ONE (1) YEAR on count 1 pursuant to Section 3651 of T. 18 U.S. Code, as amended, with provision that the deft. be confined in a JAIL type institution for a period of SIX (6) MONTHS as provided in the afore-said section. Execution of the remainder of the prison sentence is suspended and the deft. is placed on probation for a period of ONE (1) YEAR, to commence upon expiration of confinement, subject to the standing probation order of this Court AND deft. is FINED \$10,000 on count 1. Fine to be paid or the deft. is stand committed until the fine is paid or he is otherwise discharged according to law. Deft. is continued on present bail until 7-23-75 at which time he is to surrender for service of sentence. Counts 2 thru 18 are dismissed on motion of deft's counsel with consent of the Govt. Bonsal, J. issued all copies.
- 6-16-75 Filed ORDER that deft. P. Rosenthal surrender to commence service of the sentence imposed on 6-9-75 directly to the authorities in charge of such institution as may be designated by the Bureau of Prisons, with the Court's recommendation that such surrender be to the authorities in charge of the Fed. Prison Camp at Allenwood, Penna., etc. Bonsal, J.
- 6-17-75 Filed memo-end. on motion docketed 4-15-75 Motion denied after argument. Bonsal, J.

- 6-17-75 Filed memo-end. on motion docketed 6-11-75 Motion denied after argument. Bonsal, J.
- 6-17-75 PETER HORVAT (atty. present) Filed Judgment - deft. is committed to the custody of the Atty. Gen'l. for imprisonment for a period of SIX (6) MONTHS on count 1: imposition of sentence on counts 2 thru 18 is suspended. Deft. is placed on probation for a period of TWO (2) YEARS to commence upon expiration of confinement imposed on count 1, subject to the standing probation order of this Court. Bail pending appeal is fixed at \$10,000 P.R.B. Bonsal, J. issued all copies.
- 6-17-75 Deft. Baron given to 6-25-75 to surrender upon consent of Govt. Bonsal, J.
- 6-24-75 Filed deft. R. Baron's notice of appeal from judgment of 6-16-75. Mailed copies.
- 6-24-75 Filed deft. P. Horvat's notice of appeal from judgment of 6-16-75. Mailed copies.
- (Papers from Judge Bonsal's chambers 7-1-75)
- 7-1-75 Filed deft. R. Baron's presentence memorandum.
- 7-1-75 Filed Govt.'s memo. of law re: opposition to Horvat's offer in evidence of portions of Horvat's testimony before the Grand Jury.
- 7-1-75 Filed deft. P. Horvat's motion re: list of documents, etc.
- 7-1-75 Filed reply memo. of law in support of deft Blitz's motion for new trial.
- 7-1-75 Filed Govt.'s affdvt. re: response to three motions of deft. Horvat based upon the Grand Jury proceedings in this case.
- 7-1-75 Filed reply affdvt. of R. Baron re: answer to appl. for withdrawal of guilty plea.
- 7-1-75 Filed Govt.'s memo. of law in opposition to deft's.

motion to withdraw guilty plea.

- 7-1-75 Filed deft. P. Horvat's notice of motion and memo. of law re: dismissal of counts 9 & 10.
- 7-1-75 Filed deft. P. Horvat's memo. of law in support of motion to dismiss.
- 7-1-75 Filed deft. P. Horvat's notice of motion re: order for dismissal, etc.
- 7-1-75 Filed Govt.'s sentencing memorandum.
- 7-1-75 Filed letter from G. Van Aken to Judge Bonsal dated 5-2-75.
- 6-30-75 Filed deft. P. Rosenthal's notice of motion re: reduction of sentence ret: no date given.
- 6-30-75 Filed memo-end. on motion docketed 6-30-75. Motion for reduction of sentence is denied. Bonsal, J.
- 7-1-75 Filed CONSENT ORDER that deft. J. J. Santiago's date of surrender is adjourned to 7-21-75. Bonsal, J.
- 7-2-75 Filed notice that the record on appeal has been certified and transmitted to the U.S.C.A.
- 7-3-75 Filed transcript of record of proceedings, dated 5-14-75.
- 7-3-75 Filed transcript of record of proceedings, dated 5-28-75.
- 7-3-75 Filed transcript of record of proceedings, dated 5-20-75.
- 7-2-75 Filed ORDER that Peter Rosenthal is granted furlough privileges or transfer to a half-way house located in Richmond, Virginia if in the opinion of the authorities in charge of the Fed. Prison Camp at Allenwood Penn., etc. be deemed appropriate, etc. Bonsal, J.

7-3-75 Filed ORDER that the appellant, Peter J. Horvat, is permitted to prosecute said appeal in form a pauperies. Bonsal, J.

7-10-75 Filed transcript of record of proceedings, dated 5-22-75.

6-20-75 G. Van Aken - filed judgment and commitment, deft. delivered 6-6-75 FPC Eglin at Eglin AFB, Florida.

7-1-75 Robin C. Baron - filed judgment and commitment, deft. delivered to 6-25-75 Fed. Det. Hdqtrs. N.Y.C.

7-1-75 Peter B. Rosenthal - filed judgment and commitment, deft. delivered to Allenwood Fed. Prison Camp.

7-2-75 Filed ORDER that deft. P. Rosenthal be granted furlough privileges or transfer to a half-way house located in Richmond, Virginia, etc. if in the opinion of the authorities in charge of the Fed. Prison Camp at Allenwood Penn. it be appropriate, etc. Bonsal, J.

7-2-75 Peter Horvat - filed Unsecured Personal Recognizance Bond pending appeal in the sum of \$10,000.

7-14-75 J. Santiago - bench warrant ordered. Conner, J.

7-14-75 Wm. McLeod - filed CJA 20 approval for payment of fees of atty. Bonsal, J. issued copies CJA Clerk.

7-14-75 Richard Orpheus - filed CJA 20 approval for payment of fees of atty. Bonsal, J. issued copies CJA Clerk.

7-14-75 John J. Santiago - bench warrant issued.

7-17-75 Filed transcript of record of proceedings, dated 5-29-75.

7-25-75 J. Santiago - Filed judgment and commitment and marshal's return, deft. delivered F.D.H. N.Y.C. 7-21-75.

6-13-75 Van Aken 5

6-17-75 Treas 5

6-22-75 Finley 5

6-24-75 Cover 5

6-26-75 Treas 10

7-24-75 P. Rosenthal - filed judgment and commitment, and marshal's return - deft. delivered to Allenwood Prison Camp, Montgomery Pa. 6-23-75.

7-30-75 Filed deft. B. Ross's notice of motion re: reduction of sentence.

7-24-75 Filed transcript of record of proceedings, dated 4-24-75.

8-6-75 Filed transcript of record of proceedings, dated 6-9-75.

8-6-75 Filed transcript of record of proceedings, dated 6-19-75 (R. Baron).

8-6-75 Filed transcript of record of proceedings, dated 6-19-75 (S. Hill).

8-6-75 Filed transcript of record of proceedings, dated 6-19-75 (P. Horvat).

7-3-75 B. Ross - filed judgment and commitment and marshal's return, deft. delivered to F.D.H. N.Y.C. 6-12-75.

8-14-75 Filed memo-end. on motion docketed 7-30-75. Motion for reduction of deft. B. Ross' sentence. Denied. Bonsal, J.

8-22-75 Filed letter from G. Van Aken to Judge Bonsal re: reduction of sentence.

8-22-75 Filed memo-end on letter docketed this date. The foregoing letter from the deft., dated 8-11-75 is treated as a second motion for reduction of sen-

tence. Motion denied. Bonsal, J. m/n

9-11-75 J. Santiago - filed CJA 20 appointment of counsel Stuart Holtzman. Bonsal, J. issued all copies CJA Clerk.

9-11-75 J. Santiago - filed CJA 20 approval for payment of counsel fees. Bonsal, J. issued all copies CJA Clerk.

9-22-75 Filed deft. P. Rosenthal's notice of motion re: reduction of sentence.

9-23-75 Filed letter from G. Van Aken to Judge Bonsal re: reduction of sentence.

9-23-75 Filed memo-end. on letter docketed this date from G. Van Aken. Foregoing letter is treated as a motion for reduction of sentence, etc. Denied. Bonsal, J. m/n pro-se.

9-24-75 Filed memo-end. on motion docketed 9-22-75. Motion for reduction of deft. P. Rosenthal's sentence is denied. Bonsal, J. m/n

10-24-75 Filed affdvt. for writ of habeas corpus and testificandum for George Van Aken. Writ issued ret. 10-30-75.

10-22-75 Filed affdvt. for writ of habeas corpus and testificandum for Peter B. Rosenthal. ret. 10-28-75.

10-22-75 Filed affdvt. for writ of habeas corpus and testificandum for George Van Aken. ret. 10-28-75.

10-28-75 Filed true copy of order of the U.S.C.A. that the motion of appellant Robin Baron by ntoice of motion dated 9-22-75 for leave to withdraw the appeal of the appellant is granted. m/n Lumbard, Mansfield, Timbers.

10-30-75 Judgment #75,534 - (deft. P. Rosenthal) fine marked satisfied and entered in money judgment book. Paid in full.

11-6-75 Filed affdvt. for W/H/C. ad Testificandum for George Van Aken. Writ returned unexecuted. Inmate not located at FPC Allenwood.

11-12-75 Filed deft. Van Aken's notice of motion (amended) re: vacate judgment of conviction and/or sentences ret: 12-1-75. (also 73 Cr. 654).

11-12-75 Filed deft. Van Aken's memo. of law re: support of motion to vacate judgment of conviction and/or sentences (also 73 Cr. 654).

11-12-75 Filed deft. Van Aken's notice of motion re: vacate judgment of conviction and/or sentences.

12-4-75 Filed sur reply affdvt. of Michael W. O'Sullivan.

12-4-75 Filed memo. of law in support of sur reply affdvt.

12-2-75 Jury empanelled trial begun as to defts. Frank Kadison, Robert Turco cts. 1-20. Bonsal, J.

12-3-75 Trial cont'd.

12-4-75 Trial cont'd. Count 20 dismissed. Defts. Acquitted. Bail discharged. Bonsal, J.

12-11-75 Filed memo-end. on motion docketed 11-12-75. Accordingly, petitioner Van Aken's motion to vacate and/or set aside the judgments of conviction and sentence is denied. Bonsal, J. mn

12-19-75 Filed deft. G. Van Aken's notice of appeal from order denying petition to vacate or set aside judgment of conviction, etc. Mailed notices.

1-9-76 Hill MCC 1-5-76.

FINES

9-30-75 Blitz \$700

10-2-75 Treas \$700

10-3-75 Blitz \$100

10-7-75	Escrow \$100
10-29-75	Rosenthal \$10,000
10-30-75	Treas (Pd in Full) \$10,000
11-7-75	Blitz \$100
11-13-75	Escrow Acct. \$100

UNITED STATES DISTRICT COURT
Southern District of New York

-----x 73 Cr. 654
74 Cr. 1226
UNITED STATES OF AMERICA, :
 :
 plaintiff, : AMENDED NOTICE OF
 : MOTION TO VACATE
 - against - : JUDGMENT OF CONVICTION
 : AND/OR SENTENCES
 GEORGE VAN AKEN, :
 :
 defendant. :

-----x

Please take notice that upon the annexed petition, affidavit of George Van Aken and the exhibits attached thereto, and all the proceedings heretofore had herein the undersigned will move this court before Hon. Judge Dudley Bonsal, at the United States District Court for the Southern District of New York, Foley Square, New York, New York 10007, on Monday, December 1, 1975 in Room 2804 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard for an order pursuant to 28 U.S.C. §2255, vacating and/or setting aside defendant's judgments of conviction dated May 14, 1975 and/or sentence, dated May 14, 1975, on the grounds that defendant's constitutional rights were violated by unlawfully induced pleas of guilty and that he was denied due process and representation at the sentencing hearing.

dated in New York, New York
on 12 November 75

Brady, Tarpey, Downey, Hoey, P.C.

by Michael W. O'Sullivan
Michael W. O'Sullivan
attorneys for defendant, Van Aken
84 William Street
New York, New York 10038
212-269-1010

TO:

United States Attorney
Southern District of New York
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007

Warden
P.O. Box 600
Federal Prison Camp
Eglin Air Force Base, Florida 32542

Mr. Norman Best
U.S. Probation Office
United States District Court
Southern District of New York
Foley Square
New York, New York 10007

STATE OF NEW YORK)
 :
COUNTY OF NEW YORK) ss.:

Marcia E. Faatz, being duly sworn, deposes and
says: deponent is not a party to the action, is over 18 years of
age and resides at 66 West 82 Street, New York, New York 10024.

On Wednesday 12 November 75 deponent served the
within amended notice of motion upon Norman Best, U.S.
Probation Office attorney(s) for United States of America
in this action, at U.S. Dist. Ct., Southern Dist. of N.Y., Foley
 Square, NY, N.Y. 10007
the address designated by said attorney(s) for that purpose by de-
positing a true copy of same enclosed in a post-paid properly ad-
dressed wrapper, in an official depository under the exclusive care
and custody of the United States Postal Service within the State of
New York.

MARCIA E. FAATZ

Sworn to before me this
12 day of November 75.

MICHAEL W. O'SULLIVAN
Notary Public, State of New York
No. 41-2984995
Qualified in Queens County
Commission Expires March 30, 1977

STATE OF NEW YORK)
 :
COUNTY OF NEW YORK) ss.:

Marcia E. Faatz, being duly sworn, deposes and
says: deponent is not a party to the action, is over 18 years of
age and resides at 66 West 82 Street, New York, New York 10024.

On Wednesday 12 November 75 deponent served the
within amended notice of motion upon Warden

attorney(s)-for

in this action, at P.O. Box 600, Eglin Air Force Base, Florida 32542
warden
the address designated by said attorney(s) for that purpose by de-
positing a true copy of same enclosed in a post-paid properly ad-
dressed wrapper, in an official depository under the exclusive care
and custody of the United States Postal Service within the State of
New York.

MARCIA E. FAATZ

Sworn to before me this

12 day of November 75.

MICHAEL W. O'SULLIVAN
Notary Public, State of New York
No. 41-2984995
Qualified in Queens County
Commission Expires March 30, 1977

MICHAEL W. O'SULLIVAN
Notary Public, State of New York
No. 41-2984995
Qualified in Queens County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
Southern District of New York

-----x		73 Cr. 654
		74 Cr. 1226
UNITED STATES OF AMERICA,	:	
	:	
plaintiff,	:	MOTION TO VACATE
	:	JUDGEMENT OF CONVICTION
- against -	:	<u>AND/OR SENTENCES</u>
	:	
GEORGE VAN AKEN,	:	
	:	
defendant.	:	
-----x		

 Please take notice that upon the annexed petition, affidavit of George Van Aken and the exhibits attached thereto, and all the proceedings heretofore had herein the undersigned will move this court before Hon. Judge Dudley Bonsal, at the United States District Court for the Southern District of New York, Foley Square, New York, New York 10007, on _____, and 10 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard or at such time and place as directed by the court for an order pursuant to 28 U.S.C. §2255, vacating and/or setting aside defendant's judgments of conviction dated May 14, 1975 and/or sentence, dated May 14, 1975, on the grounds that defendant's constitutional rights were violated by unlawfully induced pleas of guilty and that he was denied due process and representation at the sentencing hearing.

dated in New York, New York
on 6 November 75

Brady, Tarpey, Downey, Hoey, P.C.

by

Michael W. O'Sullivan
attorneys for defendant, Van Aken
84 William Street
New York, New York 10038

TO:

United States Attorney
Southern District of New York
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
212-264-3311

Warden
P.O. Box 600
Federal Prison Camp
Eglin Air Force Base, Florida 32542

Mr. Norman Best
U.S. Probation Office
United States District Court
Southern District of New York
Foley Square
New York, New York 10007

-31A-
UNITED STATES DISTRICT COURT
Southern District of New York

	-x	73 Cr. 654 74 Cr. 1226
UNITED STATES OF AMERICA,	:	
plaintiff,	:	MOTION TO VACATE DEFENDANT'S PLEAS
- against -	:	<u>AND SENTENCES</u>
GEORGE VAN AKEN,	:	
defendant.	:	

-----x

Defendant shows to the court as follows:

1. The defendant, as more fully set forth in his accompanying affidavit, is a prisoner in custody at the Federal Prison Camp, Eglin Air Force Base, Florida under Federal Court sentence pronounced by the Hon. Judge Dudley Bonsal on May 14, 1975 in the United States District Court for the Southern District of New York.

2. The defendant's guilty pleas were induced by misrepresentations (including unfulfilled or unfulfilled promises) and by a promise that by its very nature was improper. The defendant, in or about March 1973, was promised that: (1) his sentence would not remain open; (2) he would be sentenced before Assistant U.S. Attorney left the U.S. Attorney's Office; (3) if his case was not before Judge Tyler, his attorney would have veto power over the judge.

The latter unfulfillable and improper promise in particular renders the guilty pleas invalid and subject to collateral attack.

The sentencing procedure on May 14, 1975 denied the defendant of his constitutional rights under the Fifth and Sixth amendment. Defendant's counsel was denied permission by the court to designate specific misstatements and omissions in the Government's sentencing memorandum. When the court ruled on page 9, line 12 of the sentencing transcript that the tender of such information was not appropriate, the sentencing procedure became contrary to law, and the sentence imposed became subject to collateral attack.

3. This court should require defendant's production at the hearing on this motion, because there are substantial issues of fact as to events in which the defendant participated.

WHEREFORE, defendant moves the court that it order production of the defendant for a hearing on this motion and that, after such hearing, the judgment of conviction and sentence based upon defendant's pleas of guilty be set aside.

dated in New York, New York
on 6 November 75

Brady, Tarpey, Downey, Hoey, P.C.

by Michael O'Sullivan

Michael O'Sullivan

attorneys for defendant

George Van Aken

84 William Street

New York, New York 10038

212-269-1010

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,	:	
	:	73 Cr. 654
plaintiff,	:	74 Cr. 1226
	:	
- against -	:	Motion to Vacate
	:	Sentence Under
GEORGE VAN AKEN,	:	<u>28 U.S.C. 2255</u>
	:	
defendant.	:	

-----x

George Van Aken, being duly sworn, deposes and says that:

1. Sentence was imposed upon me on May 14, 1975 in the United States District Court for the Southern District of New York by the Hon. Judge Dudley B. Bonsal, after conviction upon a plea of guilty to one count of conspiracy to defraud in the Health Evaluation indictments and one count of conspiracy to defraud in the Elmvist indictments. I was sentenced to imprisonment for two three year terms to run concurrently, and received two committed fines of \$10,000 each. I am confined to the Federal Prison Camp, Eglin Air Force Base, Florida, although I am temporarily incarcerated in the New York City Metropolitan Correctional Center to testify as a Federal witness.

2. Sentence was imposed upon me in violation of my right to due process. On the morning of May 14, 1975 my prior attorney, Peter Morrison made an application for an adjournment to the

sentencing court on the " . . . ground that there are things in the probation report that are inaccurate reflections of the situation." Sentencing Transcript, hereinafter referred to as Sen. Tran., page 2, lines 9-12. The court denied his application stating that:

I am not going to grant that. This presentence report has been available for a long time, and all that happened is that the defendant I think, his people came in this morning a little after 9 and began to look at it. They could have looked at it a long time before. It's been available. I am not going to grant that.
Sen. Tran., p. 2, lines 13-19.

Prior to that time, I had attempted to contact Mr. Morrison after receiving the Government's Sentencing Memorandum in Florida on May 9, 1975. I was unable to communicate with him about it or sentencing until May 13, 1975. I had been informed that prior to that time he had been in Europe. Until late afternoon on May 13, 1975, I was unaware that the report was available and could be read by me. It is apparent from the court's remarks that Mr. Morrison did not have either the report checked or was unable to check it due to his absence from the country.

The prosecutor requested that my attorney state " . . . what he considered to be a misstatement of fact in the memorandum" because Mr. Morrison had claimed that there were both omissions and misstatements of fact contained in the government's sentencing memorandum. Sen. Tran., p. 9, lines 4-9. Mr. Morrison stated,

"I'd be happy to go through that, if your Honor thinks it would be appropriate." But the court prevented my counsel from doing so by stating very clearly, "No, I don't think so." Sen. Tran., p. 9, lines 10-12. By so doing, my rights under Federal Rules Criminal Procedure, Rule 32(a)(1), U.S.C.A. was abridged and rendered ineffective.

The court had previously denied the application for an adjournment. I had been testifying on behalf of the Government, and the record contains no objection by the prosecutor or claim of prejudice if the application had been granted. More significantly, I did not have ample opportunity to prepare for sentencing with the assistance of counsel, and by its refusal to hear counsel on the omissions and misstatements in the Government's Sentencing Memorandum, the court deprived me of my constitutional rights under the Fifth and Sixth Amendments to have counsel given a full opportunity to present evidence of mitigating circumstances, evidence to correct any errors or mistakes, evidence showing that probation should be granted, or evidence that might otherwise have favorably influenced the court in passing sentence.

Furthermore, the court was not appraised of the terms of my agreement with the Government at the time of my sentencing. The agreement was made on or about March 5, 1973. Present when the agreement was made were: Peter Morrison, my former counsel; David

Brodsky, Assistant United States Attorney, Southern District of New York; Joel Friedman, Organized Strike Force, Southern District of New York; Edward Levitt, Organized Strike Force, Southern District of New York; and members of the S.E.C. and I.R.S. Notes of the agreement were made by Mr. Friedman. This was subsequent to my arrest, but prior to my entry of guilty pleas on two counts in the indictments against me. At a number of trials, as a Government witness, I testified that one of the terms of my agreement with the prosecutor and the Government was that if any judge, other than Judge Tyler, sat on any of the Government's cases against me, that my attorney had veto power over the selection of the judge.

Prior to my sentencing, I inquired of my counsel the reputation of this court in passing sentence on security violators. I believed that a judge, other than your Honor, would be in my best interests. I asked and instructed my counsel to exercise the veto power granted. My counsel informed me that no such deal had been made. I assured him that it had, and at the time it was done, he had assured me that it was a major concession from the prosecutor and the Government.

On June 20, 1975 pursuant to my request, the U.S. Attorney's Office through Mr. Amorosa sent me a copy of the notes of my agreement. These notes are Mr. Friedman's. They are not mine. Attached hereto and marked Exhibits I, II, III, IV and V respectively are the

following: (1) a copy of the sentencing transcript of May 14, 1975; (2) a copy of a portion of my testimony on the deal at the Blitz trial; (3) a copy of a portion of my testimony on the deal at the Baron trial; (4) a copy of Mr. Amorosa's letter of June 20, 1975; and (5) a copy of Mr. Friedman's notes which conclusively show that a deal had been made giving me, through my attorney, veto power over any judge of this court, excluding the exception of Judge Tyler. My position throughout my case has been firm and consistent on this point.

In addition to the promise of veto power, I was promised sentencing prior to David Brodsky, Assistant United States Attorney, leaving the U.S. Attornye's Office. Despite my strenuous objections, I was not sentenced until 22 months after he left. I was also promised that my sentence would not remain open, and was further promised orally the Government would make known the full extent of my cooperation. The Government breached each of the above promises and failed to make known to the Sentencing Court that independent witnesses had confirmed to them that overt physical attempts and threats had been made against me and my family.

I can truthfully state that I would not have pleaded guilty, furnished the prosecutor, grand jury and the Government with any information about my dealings, or testified against those persons

indicted with me if it were not for the veto power provision of my deal with the prosecutor and the Government. The Government's sentencing memorandum makes no mention of the deal, and I can now understand why.

It is respectfully submitted that I was induced by misrepresentations, unfulfilled or unfulfillable promises, or perhaps by promises that are by their nature improper. I pleaded guilty and cooperated with the prosecutor and the Government based upon these promises. I was denied due process because of them.

No prior application has been made to this court for the relief requested herein, although the court has denied two prior pro se motions for a reduction of sentence.

I further respectfully move this court for an order vacating my sentence and the judgment on based on my guilty pleas.

GEORGE VAN AKEN

Sworn to before me this

day of November 1975.

-39A-

EXHIBIT 1

1 elbr

-40A-

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 ----- x
5 UNITED STATES OF AMERICA, :

6 v. :

74 Cr. 1226

7 GEORGE VAN AKEN, :

8 Defendant. :

9 ----- x
10 Before:

11 HON. DUDLEY B. BONSAI,

District Judge

12 New York, May 14, 1975

13 Room 1505 - 9:30 a.m.

14 APPEARANCES:

15
16 PAUL J. CURRAN, Esq.,

United States Attorney for the
Southern District of New York,

17 By:

DOMINIC AMOROSA, Esq.,

Assistant United States Attorney

18
19 PETER MORRISON, Esq.,

Attorney for Defendant

20
21 -----
22
23
24
25

(Case called.)

THE COURT: Both sides ready?

MR. AMOROSA: The government is ready, your Honor.

MR. MORRISON: If your Honor please, on behalf of the defendant I would like to make an application.

THE COURT: What is your application?

MR. MORRISON: My application, if your Honor please, is for an adjournment of the sentencing on the ground that there are things in the probation report that are inaccurate reflections of the situation.

THE COURT: I am not going to grant that. This presentence report has been available for a long time, and all that happened is that the defendant I think, his people came in this morning a little after 9 and began to look at it. They could have looked at it a long time before. It's been available. I am not going to grant that.

MR. MORRISON: May I just extend my explanation.

I understand your Honor's ruling but just for the record, if I may. One of the things in the probation report that causes concern to Mr. Van Aken relates to the picture painted by the probation report with respect to his financial situation.

Because of an application that I previously made to withdraw I feel that I may not be the most effective advocate for Mr. Van Aken on that particular score.

THE COURT: I will hear you on that, of course. You may make such argument as you want. Does the government have anything to say?

MR. AMOROSA: No, your Honor, the government's position with regard to Mr. Van Aken's sentencing is exclusively reflected in its memorandum which it submitted both to the Court and to the defendant and his attorney.

THE COURT: Allright. Mr. Morrison, you may proceed.

MR. MORRISON: Thank you, your Honor. If your Honor please, Mr. Van Aken stands convicted on his own plea of guilty to one count of conspiracy in the so-called Health Evaluation indictments, that is 73 Cr. 754 and one count of conspiracy in so-called Elinvest indictment, that is superseding indictment 74 Cr. 1226. He also has been indicted in the Academic case, but as I understand, that indictment will be dismissed after sentencing in the two cases --

THE COURT: Is that the one that involves M.H. Studios?

MR. MORRISON: Yes, your Honor.

THE COURT: All right.

MR. MORRISON: Mr. Van Aken very early in the development of these cases by the U.S. Attorney's office began to cooperate, it was not a posture lightly arrived at after a lot of work had been done by the U.S. Attorney's office. And in fact, his cooperation antedates either of the indictments to which he pleaded guilty which he stands convicted for and for which he appears before your Honor for sentencing this morning.

THE COURT: I wish it had antedated the crimes with which he is charged.

MR. MORRISON: I think we all wish that that were so, including Mr. Van Aken, if your Honor please.

Mr. Van Aken began to cooperate with the government more than two years ago, in March of 1973. And by our rough count has extended to the government something in the neighborhood of 200 days of cooperation in the course of that two years. He testified in four trials for the government. There are at least two additional trials which he will testify for the government in connection with. I am not going to contend that, obviously, that no crimes were committed, and Mr. Van Aken doesn't take that position either, if your Honor please. But it seems to me that the man has exhibited in a very meaningful way his allegiance to the

government, the assistance that he has extended to them, and I think that in each case he has been very helpful to the government. I think that shines through the sentencing memorandum that the government has submitted to your Honor. There are a few other factors that I think may fairly be taken into consideration by your Honor in imposing sentence upon Mr. Van Aken. Originally Van Aken was to be sentenced almost two years ago. But for the convenience of the government and the cases in which he was cooperating, that sentencing was put off until today and so there has been a period of nearly two years where the threat of what is to happen today has been most severe on not only Mr. Van Aken, but his family too. His wife is with him today, his two young children, and his father, with whom he is very close.

His father is here today too, your Honor. I should also say that though I don't intend to pick them off one by one, there are some very serious factual inaccuracies in the government's sentencing memorandum and some very serious omissions. The picture painted of Mr. Van Aken in the government's sentencing memorandum, it seems to me, omits a series of steps taken by Mr. Van Aken, all of them prior to the criminal case, in an effort to assist those people who were in danger of losing money in the stocks involved in

these two cases.

In one of them he gave up a \$231,000 mortgage in favor of creditors. This was prior to the criminal case; contributed something in the neighborhood of \$25,000 to people who had purchased stock in Elinvest to make them whole, and offered to contribute a very substantial number of shares in an effort to see that the Astron Fund which is referred to in the government's sentencing memorandum did not suffer any damage.

I would like for a moment must to elaborate a little further on the probation report. One of the very serious statements in that report, it seems to me, is the statement which indicates that though Mr. Va Aken professed to be cooperating he did not furnish documentation requested by the probation office.

THE COURT: That was relating to financial matters, as I recall it.

MR. MORRISON: I understand. I understand, if your Honor please, that that information was furnished first in handwritten form and then -- I am repeating what I have been told, I was not there -- first in handwritten form to the probation office which then could not locate the information that was furnished, and then finally in some other form.

The probation report, as I understand it, is dated or was dictated on April 3rd and subsequent to the date of the probation report that you held in your hand, your Honor, but prior to any time that we had any knowledge that there was any such statement in the probation report, Mr. Van Aken did furnish the information, so I am told. Secondly, the probation report is liberally sprinkled with statements attributing to Mr. Van Aken's ownership of property which I understand he does not own. That property as I understand it is real property, in any event not liquid assets, and I am told that those assets are owned not by Mr. Van Aken, but by trusts controlled by other people; family members, but not by Mr. Van Aken himself. I have to footnote that to say that I am sensitive to the fact that I don't think that that particular argument is being made by the most effective advocate, [and it was a basis for my application to your Honor to adjourn sentencing this morning] I should also mention to your Honor what is obvious, and that is that everything in the case appearing before your Honor this morning relate to the securities business.

Mr. Van Aken has not been in the securities business for five and a half years. He consented to an SEC administrative proceeding which effectively bars him for the rest of his life from participating in the securities

business, and I think that is another very strong factor that should be taken into consideration.

Finally, since Mr. Van Aken began to cooperate more than two years ago, he has not been able to be gainfully employed. I can't in good conscience say that that is totally the result of the fact that he was cooperating with the government, but I think that a very strong contributing factor to his unavailability for employment was the degree to which he was required to and willingly cooperated with the government. As I said before, something in the neighborhood of 200 days of cooperation.

Some time after I began to cooperate, his life was threatened on more than one occasion, and he was required to and did move his family from the metropolitan area, so that he now lives in another area of this country. He has testified either in open court or given information to the U.S. Attorney in the grand jury and stands ready to testify in trials against at least three people who are reputedly members of organized crime. So it seems to me that the man has extended himself in a most meaningful way to cooperate with the government and to help atone for the things that he stands before your Honor on this morning, and I would ask in his behalf that your Honor take into consideration all of these things in imposing sentence on

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2 him.

3 THE COURT: Thank you, Mr. Morrison.

4 MR. AMOROSA: Your Honor, may I just say one
5 thing. Mr. Morrison claimed that there were both
6 omissions from the government's sentencing memorandum and
7 misstatements of fact, but he did not indicate what he con-
8 sidered to be a misstatement of fact in the memorandum.

9 I'd just like to state that for the record.

10 MR. MORRISON: I'd be happy to go through that,
11 if your Honor thinks it would be appropriate.

12 THE COURT: No, I don't think so.

13 Mr. Van Aken, is there anything you would like to sa
14 to me, any facts you would like to bring to my attention befo
15 sentence is imposed on you?

16 THE DEFENDANT: Yes, I would, your Honor.

17 One thing I would like to say is that although
18 I have had an opportunity, and I was a witness in your
19 Court several times, I have never had the opportunity to say
20 that I was very sorry for all the things that I have done,
21 and apologize to the Court. I apologize to the Court and
22 I apologize to my wife and family, who have suffered the
23 most. I would also like to say that in the Elinvest
24 case specifically, once I realized the enormous problems that
25 I caused everybody in Elinvest, I did take every step

I could to rectify it. We did put in a total of \$230,000 in the company in various loans, et cetera. I did give that up well before there was any criminal investigation.

I have also been paying back people. I have paid back a total of \$25,000 to various individuals that have bought the stock in the open market, and I continue to pay people back and I continue to try to meet some obligations of people that have lost money, that I have promised to pay back. In the Health Evaluation Systems case I did put in \$50,000 in the company, interest free, after I had made my profit from the manipulation. I made a profit of \$30,000, your Honor, and I did put in \$50,000 interest free in an attempt to raise capital for the company because the company had hired new management. The company never was successful. I never did get my money back.

Just overall, there is really no excuse for a person that has a reasonable amount of intelligence to do the things that I have done, and I am sorry that I have wasted a good portion of my life as well as damaging many innocent individuals.

Thank you.

THE COURT: I think much of what you have been telling me now was contained in a letter you wrote to Probation Officer Best, wasn't it, on April 2, 1975?

1 THE DEFENDANT: Yes, sir.

2
3 THE COURT: And I have had that, it was available
4 to me, and I think I made it available to you in the pre-
5 sentence report. I find this a very difficult matter for
6 me. The defendant has pled guilty to a conspiracy count in
7 two separate indictments. One involves Health Evaluation
8 Systems, 73 Cr. 654, which as I recall it was originally
9 assigned to Judge Tyler, then assigned to me, and the second
10 indictment involving Elinvest, 74 Cr. 1226. What about
11 74 Cr. 798, that was superseded by 74 --

12 MR. AMOROSA: Criminal 1226.

13 THE COURT: This was superseded?

14 MR. AMOROSA: Yes.

15 THE COURT: Mr. Wallace informs me that he pled
16 guilty, I guess before the indictment was superseded, by
17 adding a couple of other defendants. The indictment was
18 the same.

19 MR. AMOROSA: That is right. Then he pled
20 again to the superseding indictment.

21 MR. MORRISON: He withdrew his plea to 974, as
22 I understand it.

23 THE COURT: And then pled to the superseding?

24 MR. MORRISON: Yes, your Honor.

25 THE COURT: Right. I wanted to get the record

straight on that. Thank you very much. I did hear you testify on two occasions, I believe, Mr. Van Aken, at jury trials and I think on one other occasion which was some kind of discovery motion for documents, as I remember it.

THE DEFENDANT: Yes, sir.

THE COURT: Therefore, I have a pretty fair knowledge of the background insofar as it involves Elinvest. The thing that shocks me about all this is that as far as I can see, you had more opportunities than most as a young man; you were employed at the United States Trust Company, I think you were assistant to the president, I think you testified, isn't that correct?

THE DEFENDANT: Yes, your Honor.

THE COURT: That is certainly one of the first line banking institutions here. Then you got in the brokerage, Andresen & Company. I think you indicated that is where things began to go wrong, Andresen.

THE DEFENDANT: Yes, sir.

THE COURT: You began playing around with this --

THE DEFENDANT: Not at Andresen, your Honor.

I had put some customers of mine into a stock called Unimet. That was sponsored by Jack Andresen, principal of Andresen & Company. That turned out to be fraudulent.

THE COURT: Then you went to Baer, Wald & DeBoer. I guess you told me they went bankrupt after a while.

THE DEFENDANT: They went bankrupt.

THE COURT: You were a partner in there?

THE DEFENDANT: Yes.

THE COURT: Then you set up this International Investors Ventures.

THE DEFENDANT: Yes, sir.

THE COURT: There is no doubt that you have cooperated with the government, Mr. Van Aken, but by the same token I have got to remember that your cooperation began after you had engaged in these manipulations. The thing that makes this kind of problem difficult, where you have a person who is well educated, like you, you went to Hofstra as I recall.

THE DEFENDANT: Yes, I did.

THE COURT: Who has had every opportunity and who engages in a stock fraud, manipulation, or whatever you call it, there is no doubt that you were wilfully defrauding an awful lot of people who were less able to stand the gaff than yourself. And it is a problem that I have here, it seems to me, as a community problem; that if people who engage in this kind of manipulative activity can when they

1 finally get apprehended then start cooperating and receive
2 no sentence or a light sentence, the effect of that is to
3 encourage other people who might be so minded in the market
4 to do the same darn thing.
5

6 Certainly one of the things if our system is to
7 survive, there has got to be some standards in the securities
8 business which the SEC has been trying to maintain and where
9 the law is violated in a criminal way it seems to me that the
10 community demands that appropriate action be taken, because
11 our struggle to have free and fair markets and securities of
12 course would be destroyed. And I have to take that into
13 consideration. In other words, it is the deterrent
14 effect of this thing.

15 You have pleaded guilty to two indictments, two
16 conspiracy counts which the possible sentence here would be a
17 total of ten years.

18 Of course I am not going to give you that. I am
19 going to recognize your cooperation, I think it was sub-
20 stantial. But that doesn't mean that I am not going to give
21 you a prison sentence. I feel I must do that. So far as
22 your financial condition is concerned, the probation depart-
23 ment indicated that they didn't have too much from you.
24 I noted your letter. I think I saw some reference, I think
25 it might have been in connection with the M.H. Studios thing

about the use of some foreign accounts. I don't know about that, but I think there was some reference.

THE DEFENDANT: Yes, sir.

THE COURT: So I am going to impose fines on you and if you can establish that you can't pay the fines, of course, you can get them remitted.

On indictment 73 Cr. 654, the first count to which the defendant has pled guilty, the defendant will be committed to the custody of the Attorney General or his duly authorized representative for imprisonment for a period of three years. You will also be fined \$10,000, which is a committed fine. With respect to indictment 74 -1226, as to which the defendant has pled guilty to conspiracy, Count 1, the defendant will be committed to the custody of the Attorney General or his duly authorized representative for imprisonment for a period of three years, to run concurrently with the sentence given him on 72 Cr. 654. In addition, the defendant will be fined \$10,000 on 73 Cr. 1226, which of course will be an additional committed fine. All right.

MR. MORRISON: Your Honor, with respect to the fines that have been imposed on the two indictments, if I understood your Honor correctly, if Mr. Van Aken can prove that he cannot --

THE COURT: These are committed fines and the

provision in law as I understand it is that if he can prove that he has no resources with which to pay the fines, then the fines can be lifted, is that correct?

MR. AMOROSA: That is my understanding.

THE COURT: That is right. I think so.

MR. MORRISON: Can the date for the payment of those fines be concurrent with his release from imprisonment? In the meanwhile obviously there is a very serious economic problem of the support of his family and children.

THE COURT: I think, Mr. Morrison, I will leave it the way it is. If you find that in the course of this there is some serious problem that arises, you may make an appropriate application. But I don't think I will consider it now.

MR. MORRISON: Thank you, your Honor. With respect to the two indictments that your Honor imposed sentence this morning, I'd like to dismiss the remaining open counts.

MR. AMOROSA: We have no objection, your Honor.

THE COURT: The remaining counts will be dismissed.

MR. MORRISON: With respect to 74 Cr. 897 which was the indictment that was superseded by 74 Cr. 1226, I would like to move to dismiss as to Mr. Van Aken.

MR. AMOROSA: Your Honor, with regard to that I think the appropriate procedure would be for our office to nolle that.

THE COURT: I will say for the record I understand that that is superseded and by pleading guilty to the superseding indictment, that Mr. Van Aken's involvement in the old indictment is terminated and will be dismissed in due course.

MR. AMOROSA: As a matter of double jeopardy, we couldn't proceed on that indictment anyway.

THE COURT: I will accept that representation.

MR. MORRISON: As to the Academic, I understand the government will nolle that indictment.

MR. AMOROSA: We will nolle that with respect to Mr. Van Aken.

MR. MORRISON: With respect to date of surrender, I would ask that the surrender be delayed two weeks in order to give him time to wrap up his affairs and say goodbye to his family.

MR. AMOROSA: The government has no objection, your Honor, as long as we have a date set here for surrender.

MR. MORRISON: May I discuss that with my client?

THE COURT: Sure.

(Pause.)

MR. MORRISON: If your Honor please, could we have the 28th to surrender?

MR. AMOROSA: No objection.

THE COURT: All right. Surrender on the 28th before -- I think we had better do it at 10:30 in the morning and I guess it is Room 506.

MR. AMOROSA: Room 506 at 10:30 in the morning on May 28th.

MR. MORRISON: Is it possible for the defendant -- I really speak out of ignorance, to surrender in the area in which he lives?

THE COURT: He can always surrender to the marshal.

MR. MORRISON: Can he surrender to the marshal in the Southern District of Florida, which is where he lives, so he doesn't have the extra trip of coming up here.

THE COURT: I think he probably can.

MR. AMOROSA: It is my understanding that his placement will begin in West Street and therefore ultimately it is my understanding at this point he will have to come to West Street to be placed by the Attorney General in the facility which he will be imprisoned.

MR. MORRISON: If it can be worked out with the marshal and the Bureau of Prisons would the government

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2 consent?

3 THE COURT: I will leave it up to you and the mar
4 shal and the government.

5 If as a practical procedure under which he could
6 surrender to the marshal in Florida, I have no objection
7 to that so long as it is done on May 28th by 10:30 a.m.

8 All right.

9 MR. MORRISON: Thank you, your Honor.

10 (Time noted: 10:05 a.m.)
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EXHIBIT 2

Transcript from DL 12 TRIAL

Van Aken/Direct/Cross

- 59 -

A No.

Q Have any other inducements or promises been made to you in connection with your appearing as a Government witness?

A No.

MR. HIGGINS: I have nothing further, Your Honour.

CROSS EXAMINATION

BY MR. ROONEY:

Q Mr. Van Aken, my name is Paul Rooney. I am the attorney for Eric Blitz, and I have some questions I would like to ask you.

A Yes, sir.

Q We have never met before, have we?

A No, sir.

Q We have never spoken before?

A No, sir.

Q But there were additional matters that fall into your deal that you made with The Government, are there not, other than the testimony that you have just given to Mr. Higgins?

A Not that I am aware of.

Q Didn't The Government agree not to indict any member of your family?

A Oh, yes. Yes.

Q And didn't they agree to allow you to plead before Judge -- a Judge who your attorney selected?

THE COURT: What was that question?

MR. ROONEY: Didn't The Government agree to allow you to enter a plea of guilty to an attorney that -- Let me withdraw that.

Q Didn't The Government agree to allow you to plead to these indictments before Judges of your own selection?

A As it worked out, Mr. Rooney, The Government allowed me to plead before the Judge who was Judge Tyler, and that's where I was indicted first on Academic Development, and my attorney said that he would be satisfied if we plead before that Judge. Yes, sir, that's correct.

Q Mr. Van Aken, how old are you?

A Thirty-five.

Q Where do you live?

A Lloyd Neck, Long Island.

Q Are you from New York?

A Yes, sir.

Q Did you go to high school in New York?

A Yes, sir.

Q Did you go to college?

A Yes.

Q What college did you go to?

Q And subsequent to that arrest you made a deal with The Government to testify in their behalf; is that fair to say?

A Yes.

Q Do you know, do you remember when you made the deal? Subsequent to November of 1972?

A Sometime in the beginning of '73.

Q Would that be in about March of 1973?

*Correct date
when notes
were made*

A That's a good guess -- about as good a guess as I can make.

Q And subsequent to March of 1973, on or about that time you testified in the grand jury; is that right?

A Yes.

Q In this Court house?

A Yes.

Q And this is the first trial you have testified in; is that right?

A Yes, that's correct.

Q And prior to testifying here I take it you have gone over your grand jury testimony; is that right?

A Yes.

Q And you have gone over the various notes that people have made over the course of the last fifteen months; is that fair to say?

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EXHIBIT 3

1:45 P.M.

(In open court; jury present.)

GEORGE VAN AKEN resumed.

CROSS-EXAMINATION

BY MR. ROONEY:

Q Mr. Van Aken, my name is Paul Rooney. I am the attorney for Eric Blitz, and I have some questions. We have met once before, have we not?

A Yes.

Q Mr. Van Aken, you were arrested in November of 1972, is that correct?

A Yes.

Q And thereafter, you and your attorney worked out a deal with the Government and you agreed to testify on behalf of the Government?

A Yes.

Q Did you reach that deal in about March of 1973?

A Yes.

Q And you told us what the deal is, including your pleading guilty to two counts in two different indictments, is that correct?

A Yes.

Q Now, it is also a part of the deal, is it not, that you are going to plead before Judge Tyler, is that right?

mpb-2

Van Aken-cross

A Yes.

Q And your testimony is that your attorney had a veto power over any other Judge, is that correct?

A That is correct.

Q Now, I think you testified, correct me if I am wrong, that you agreed to pay taxes going back to the period of '69 to '72 that you owe, is that right?

A '69 to the present.

Q And you are undergoing an IRS audit now, is that right?

A Yes.

Q Is the IRS still conducting that audit?

A Yes, they are.

Q And I take it you tell the IRS where there were moneys that you had not paid out?

A Yes.

Q Did you give the IRS a list of moneys that you paid out in '70 and '71?

A Yes.

Q Now, you testified before lunch that you were engaged in the manipulation, I believe, of about five stocks

A It was five additional stocks, other than the two that I pleaded to.

Q To your knowledge Eric Blitz didn't know about

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EXHIBIT 4

United States Department of Justice

UNITED STATES ATTORNEY

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURTHOUSE

FOLEY SQUARE

NEW YORK, N. Y. 10007

ADDRESS REPLY TO
"UNITED STATES ATTORNEY"
AND REFER TO
INITIALS AND NUMBER

DFA:rs

June 20, 1975

George Van Aken
Box 600
Eglin Air Force Base
Florida 32542

Dear Mr. Van Aken:

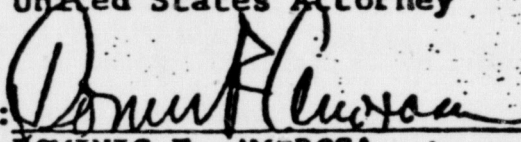
This will acknowledge your letter dated April 10, 1975, which was received by our office on June 16, 1975. It is apparent that you mis-dated this letter as you were not sentenced by the Court until May 1975.

With respect to your request for a copy of Joel Friedman's notes, please find enclosed a copy of certain notes dated March 5, 1973, which I believe may be what you are seeking. I am not certain who prepared this document.

If it is not the document you are seeking, please contact me by letter.

Sincerely,

PAUL J. CURRAN
United States Attorney

By: 
DOMINIC F. AMOROSA
Assistant United States Attorney
Tel: (212) 791-1960

Enclosure

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EXHIBIT 5

3/5/73 -

-69A-

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~~The member of family to indicate~~

- No I R S indictment returned
- but will file annual returns
- pay all taxes
- all permits
- all interest
- 69, 70, 71, 72
- will plead to (5 ind) of our choice

~~not to go~~ to court
discretion maybe
2 but no
less.

~~all~~
- ~~if~~ all cases before Judge
Tyler.

- if not before Tyler.
→ then Morrison pro
vet over judge.

- He will consent to all
SBC civil matters
pending
- Interviews either
 - Bradley
 - Morrison
 - or VA apt house
- either Green
Bradley
Doran
present
at all
meetings
- Sentencing Prior
to Brad leaving.
- Hear if want sentence remain
open
- Understanding if not 100-70
CO of Bradley and
Morrison and other network but

Sparking and SK
amenable. if 3.

Indic agreement / -
- no meeting over my
designate

all understanding all org crime here
others there
if conflict, case by case

IRS, SBC, SK FORCE, SAT

STATE OF NEW YORK)
 :
COUNTY OF NEW YORK)

ss.:

John J. Hyland, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 114 Westwood Road North, Massapequa Park, New York 11762.

On 7 November 75 deponent served the within motion and memorandum of law upon _____ of the U.S. Attorney's Office for the Southern District, New York in this action, at the Office of the United States Attorney of the Southern District of New York, One St. Andrew's Plaza, New York, New York 10007, the address designated by said attorney for that purpose by delivering a true copy thereof.

JOHN J. HYLAND

Sworn to before me this
7th day of November 75.

MICHAEL T. O'SULLIVAN
Notary Public, State of New York
No. 41-238499B
Qualified in Queens County
Commission Expires March 30, 1976

STATE OF NEW YORK)
COUNTY OF NEW YORK)

ss.:

Marcia E. Faatz, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 66 West 82 Street, New York, New York 10024.

On Friday 7 November 75 deponent served the within motion & memorandum of law upon Warden

~~attorney(s)-for~~

in this action, at P.O. Box 600, Eglin Air Force Base, Florida 32542
warden
the address designated by said ~~attorney(s)~~ for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

MARCIA E. FAATZ

Sworn to before me this

7th day of November 75.

MICHAEL W. O'SULLIVAN
Notary Public, State of New York
No. 41-2984995
Qualified in Queens County
Commission Expires March 30, 1978

MICHAEL W. O'SULLIVAN
Notary Public, State of New York
No. 41-2984995
Qualified in Queens County
Commission Expires March 30, 1978

DEA:cr

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

-v-

GEORGE VAN ACKEN,

Defendant

:

:

:

:

AFFIDAVIT

73 Cr. 654

74 Cr. 1226

-----x
STATE OF NEW YORK)
COUNTY OF NEW YORK : ss:
SOUTHERN DISTRICT OF NEW YORK)

Dominic F. Amorosa, being duly sworn, deposes
and says:

1. I am an Assistant United States Attorney in
the office of Thomas J. Cahill, United States Attorney for
the Southern District of New York and make this affidavit
in opposition to defendant's motion to vacate his judgments
of conviction pursuant to Title 28 United States Code
Section 2255.

2. On October 17, 1974, defendant pleaded
guilty before the Honorable Harold R. Tyler, United States
District Court Judge to Indictment 73 Cr 654 relating to
a securities fraud conspiracy regarding the stock Health
Evaluations Systems, Inc.

3. On January 14, 1975, defendant pleaded guilty
before the Honorable Dudley Bonsal, United States District
Court Judge to Indictment S 74 Cr 1226 relating to a
securities fraud conspiracy regarding the stock Elinest
Inc

4. On May 14, 1975, defendant was sentenced on both indictments to two three years prison terms to run concurrently, and two committed fines of \$10,000 each.

5. Defendant now attacks his conviction alleging that his pleas of guilty were induced by unfulfilled promises.

Defendant asserts that as part of his agreement with the Government he was promised that he would have veto power over the sentencing judge if he were any Judge other than Judge Tyler, and that he would be sentenced prior to the time that Assistant United States Attorney DAVID BRODSKY resigned from the United States Attorney's office. Defendant asserts that this agreement was made on his behalf on or about March 5, 1973 at a meeting present at which were Peter Morrison, defendant's former counsel, David Brodsky, former Assistant United States Attorney, Joel Friedman, former attorney with the Organized Strike Force, Southern District of New York, and members of the Internal Revenue Service and Security and Exchange Commission.

6. Defendant also contends that he was sentenced in violation of his rights to due process as he was not given an opportunity to correct errors and omissions in the Government's sentencing memorandum.

7. Defendant's contentions are without merit.

8. Defendant has not produced any affidavits in support of his position as to his agreement with the

Government. Indeed, he admits that Peter Morrison, one of the individuals alleged by him to have been present at the time of the alleged agreement, told defendant just prior to his sentence that no such agreement had been made. Moreover, during defendant's plea proceeding on October 17, 1974, before the Honorable Harold R. Tyler, Jr. defendant was specifically asked, after the Assistant United States Attorney in charge of the case recited on the record the provisions of defendant's agreement with the Government, the following questions and gave the following answers:

"By the Court

Q: I take it, Mr. Van Aken, having heard all of this, that you understand that this Court must know; is that your understanding and arrangement or agreement with the United States Attorney?

A: Yes, it is, your Honor

Q: Is there anything that has been left out?

A: No. "

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[This page left blank intentionally.]

The agreement recited that the "Government will not object to Van Aken being sentenced on both cases before one District Judge." There was nothing in the agreement recited concerning veto power and Judge Tyler. There was nothing in the agreement recited concerning when defendant would be sentence. Defendant, in furtherance of his agreement with the Government, was sentenced by one district court judge.

9. Defendant does not state upon what inaccurate information he was sentenced. The sentencing minutes clearly reflect that Judge Bonsal was totally aware of defendant's cooperation and that this was a factor in the sentence imposed. To suggest, moreover, that it is conceivable that Judge Bonsal sentenced defendant on inaccurate information is proposterous considering the fact that Judge Bonsal presided over several trials during which the defendant was a Government witness.

Sworn to:

Before me this

DOMINIC AMOROSA
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :
v. : 73 Cr. 654 (HRT)
GEORGE C. VAN AKEN, :
Defendant. :

B e f o r e :

HON. HAROLD R. TYLER, JR.,
District Judge

New York, New York
October 17, 1974
3:00 p.m.

APPEARANCES:

PAUL CURRAN, Esq.,
United States Attorney
Southern District of New York
FRANKLIN VELIE, Esq.,
JOHN WALKER, Esq.,
Assistant United States Attorneys

PETER H. MORRISON, Esq.,
Attorney for the Defendant.

1 Q:mg

2

2 THE CLERK: United States of America v. George C.
3 Van Aken.

4 MR.WALKER: Government is ready, your Honor.

5 MR. MORRISON: Defendant is ready, your Honor.

6 MR. WALKER: Your Honor, this matter is on the
7 calendar now for a plea of guilty.

8 It is my understanding that Mr. Van Aken desires
9 to withdraw his plea of not guilty entered on Indictment
10 73 Cr. 654, and to enter a plea of guilty to count 1 of
11 that indictment at this time.

12 I might briefly state, your Honor, for the record,
13 that this indictment does allege in count 1 a conspiracy
14 to commit a fraud in connection with the sale of securi-
15 ties and other related securities.

16 THE COURT: Well, Mr. Van Aken, Mr. Morrison,
17 what do you say to all this?

18 MR. MORRISON: The defendant Van Aken would indeed
19 move to withdraw his plea of not guilty previously entered
20 on count 1 of Indictment 73 Cr. 654 and desires to plead
21 guilty to that count, your Honor.

22 THE COURT: Mr. Van Aken, I assume that Mr. Peter
23 Morrison has told you that if you plead guilty here, this
24 means that you are giving up your right, which in our re-
25 public is a constitutional right, to a trial by a jury of

your peers and the correlative rights or opportunities to confront the witnesses who would be brought in to testify against you, including almost certainly a couple of co-defendants in this case, and to cross-examine them with the aid of your lawyer.

THE DEFENDANT: Yes, your Honor.

THE COURT: You want to give up your right to a trial by jury?

THE DEFENDANT: Yes.

THE COURT: You would be waiving or foregoing all defenses of law and fact that might be raised, including the defense of a denial of a speedy trial and various other marvelous things which are created for your benefit perhaps by the law and the facts of this particular case.

THE DEFENDANT: Yes, sir.

BY THE COURT:

Q Do you understand what I am saying?

A Yes, I do.

Q That is what you want to do?

A Yes, sir.

Q Has anybody told you the maximum sentence possibilities here for this kind of an offense?

A Yes, sir.

Q What did they tell you?

1 Q:mg
2 A Mr. Walker and Mr. Morrison both told me that it
3 is a maximum penalty of five years.

4 MR. WALKER: \$10,000 as well.

5 BY THE COURT:

6 Q Yes, a maximum of five years in a federal prison
7 or a maximum fine of \$10,000 or both.

8 A Yes, your Honor.

9 Q I am not saying that the judge will impose the
10 maximum. Presumably under our system you are looking
11 upon the judge who would impose sentence if you plead
12 guilty and I am frank to say I haven't the foggiest notion
13 of what sentence might be imposed and we won't know that
14 until we get a presentence report, and we hear Mr. Morrison
15 and we hear you and so on and so on.

16 The point is I want you to know what the maximum
17 possibilities might be.

18 A Yes, your Honor.

19 Q Understanding that, you are still willing to put
20 in a plea of guilty to count 1?

21 A Yes, sir, your Honor.

22 Q In rough simplistic terms, I understand count 1
23 to charge you, Ramon D'Onofrio, William I. Strub, Alfred
24 Herbert, that magnificent officer of Bank Hoffman A.G.,
25 and one Peter B. Rosenthal, with a scheme, the essentials

1 of which were that you would take some 20,000 shares of
2 a firm called Health Valuation System and that at a time
3 when the over-the-counter market was bid and asked around
4 one or two you took some 20,000 shares of this stock, got
5 it over to Bank Hoffman, and then you personally paid some-
6 body, I think you paid Strub, it says here, \$70,000 to
7 get Strub to cause foreign accounts managed by him to pur-
8 chase 20,000 shares of the common stock of Health at un-
9 doubtedly enhanced prices and that thereafter you, Van Aken
10 and D'Onofrio, were going to share the proceeds.
11

12 A Yes, your Honor.

13 Q I have left out many details, no doubt, but isn't
14 that essentially it?

15 A Essentially.

16 MR. MORRISON: Excuse me one second, your Honor.

17 THE DEFENDANT: Your Honor, that is basically
18 essentially right, but there is one minor correction, and
19 that is that I caused the payment to be made.

20 In fact, Mr. D'Onofrio made the payment through
21 Mer. Herbert overseas.

22 BY THE COURT:

23 Q When you say you caused the payment to be made,
24 what precisely do you mean by that?

25 A I discussed with Mr. D'Onofrio the fact that

Q:mg

Mr. Strub was interested in collecting the payment.

Q And do you know where the money came from?

A It came from Mr. D'Onofrio's overseas account.

Q In none other than Bank Hoffman?

A Yes, your Honor.

Q Oh, I can well imagine.

I have been listening to Mr. D'Onofrio for the last few weeks, as you may have been told

What was your arrangement? What were you going to get out of all this?

A I was going to participate in one-third of the profits from the net proceeds.

Q The profits would come when the shares were sold out to Strub's foreign accounts?

A Yes, your Honor.

Q Did you actually get any money out of that?

A Yes.

Q How much?

A Approximately \$25,000.

Q Who fixed the price at which Strub's foreign accounts would take this out?

A In effect, he did.

Q Strub?

A Yes, sir.

1 Q:mg

7

2 Q You must have been consulted about that, weren't
3 you?

4 A Yes, I was. Mr. Strub mentioned that he wanted
5 it to be sold at \$18 a share so he could get approximately
6 \$17,000 by the total sale of the shares.

7 Q So that what in effect happened, you got a mark-
8 up there, all of you, at about something around \$15 or \$16?

9 A Yes, that is true.

10 Q Was this registered stock?

11 A Yes, it was, your Honor.

12 Q Of course, I assume it goes without saying that
13 it certainly was not contemplated that Strub would tell
14 his foreign accounts how this 20,000 shares had come to be
15 parked at Bank Hoffman?

16 A No, it is not.

17 Q Mr. Van Aken, you seem to me to be a mature and
18 sophisticated man but nevertheless I have got to ask
19 you, under the law and the system:

20 Did anybody try to promise you some specific
21 favorable sentence, treatment or any other kind of treat-
22 ment in order to induce you to come in here and plead
23 guilty?

24 MR. WALKER: At this point the Government would
25 like to state for the record the arrangement as it exists

Q:mg

8

between Mr. Van Aken and the Government, so that the matter is perfectly clear.

THE COURT: All right.

MR. WALKER: The following arrangement does exist between the Government and George Van Aken, the defendant.

1. Van Aken will cooperate fully with the Government in investigations of matters in which Van Aken was involved prior to the date that Van Aken agreed to cooperate with the Government.

2. Van Aken will commit no more crimes during or after his period of cooperation.

3. Van Aken will be prosecuted on two indictments of which this is one, arising from his pre-cooperation involvement in criminal activities, and no further cases will be prosecuted based on such involvement.

4. The Government will not object to Van Aken being sentenced on both cases before one District Judge.

5. The Government will bring the nature and extent of Van Aken's cooperation to the attention of any sentencing judge but gives no assurance as to what any sentence will be. --

6. Van Aken will at all times tell the complete truth to the Government and in any testimony he shall give. Should he fail to do so, he is liable to full

prosecution for perjury and for all past criminal activities.

That, your Honor, is the understanding between Mr. Van Aken and the Government, and I would ask the Court to ask Mr. Van Aken if that accords with his understanding.

THE COURT: Indeed, I will.

BY THE COURT:

Q I take it, Mr. Van Aken, having heard all of this, that you understand that this Court must know; is that your understanding and arrangement or agreement with the United States Attorney?

A Yes, it is, your Honor.

Q Is there anything that has been left out?

A No.

Q I take it that you and Mr. Morrison have been fully aware of this agreement and that it's been reduced to writing, I would surmise, from what I just saw and heard here; is that right?

A I am not aware of it being reduced to writing with the exception of Mr. Walker writing down notes.

THE COURT: Mr. Walker, what do you say about that?

MR. WALKER: -- It has not presently been reduced to writing but this record constitutes the memorialization of this agreement.

THE COURT: All right.

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Q:mg

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BY THE COURT:

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A No.

8

Q May I ask, sir, how old are you?

9

A 35.

10

Q Are you a college graduate?

11

A Yes.

12

Q Were you at one time a registered representative?

13

A Yes.

14

15

16

17

18

19

Q You seem to me to be a man in the pink of health, in the fullness of your prime. You seem to be articulate, intelligent, and you seem to have had no difficulty whatsoever in our brief colloquy, but you tell me, am I wrong in any of my observations or guesses here in the last statement?

20

A I hope not. I don't believe so.

21

22

Q Have you suffered any recent illness or physical impediment that you know of?

23

A None whatsoever.

24

25

Q Have you ingested any medicine or drug, prescription or non-prescription, within the last 36 hours?

1 Q:mg

11

2 A None whatsoever.

3 THE COURT: Is there any question that either
4 counsel would like the Court to ask pursuant to Rule 11
5 or indeed for any other reason known to either of you?

6 MR. MORRISON: I have no such requests, your
7 Honor.

8 MR. WALKER: I have no such requests, your Honor.

9 THE COURT: Mr. Van Aken, this Court accepts your
10 application to change your plea from not guilty to guilty,
11 of count 1 of Indictment 73 Cr. 654.

12 I am going to ask Mr. Bowes, the Clerk of the
13 Court, to take your plea formally and would you like the
14 entire count read or do you waive the reading, sir?

15 MR. MORRISON: We waive the reading of count 1,
16 your Honor.

17 THE CLERK: Do you understand the charge in
18 count 1, the conspiracy count?

19 THE DEFENDANT: Yes.

20 THE CLERK: How do you now plead to that charge?

21 THE DEFENDANT: Guilty.

22 THE COURT: -- A pre-sentence report, if it has not
23 already been ordered by some other judge, will be ordered.

24 We will turn to the question of sentence date
25 because, first of all, it may be idle for me to fix a date

1 Q:mg

12

2 if some other judge is going to be the sentencing judge.

3 MR. WALKER: Perhaps Mr. Morrison can speak to
4 that question as to the sentencing judge.

5 The Government would ask that the sentencing
6 date for Mr. Van Aken be postponed until such time as
7 Mr. Van Aken has completed his cooperation with the Govern-
8 ment.

9 One of the aspects of the agreement which the
10 Government has just announced in court was the fact that
11 the Government would bring the nature and extent of Mr.
12 Van Aken's cooperation to the attention of the sentencing
13 judge.

14 THE COURT: I can understand that. The only
15 thing that bothers me a bit is that some of these things
16 tend to go on forever. All of us are mortal men, you
17 know. But in any event, Mr. Morrison, what do you say
18 about this?

19 MR. MORRISON: I join in Mr. Walker's application
20 to have sentencing deferred until Mr. Van Aken has co-
21 operated to the fullest with the Government.

22 THE COURT: All right. Then I will not fix the
23 sentence date and I would ask, however, that in the
24 fullness of time when you think that sentence should be
25 set down specifically, that you advise me of that, and you

1 Q:mg

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2 advise me also before whom the sentence is going to come.

3 MR. MORRISON: With respect to that, if your
4 Honor please, we are going to ask that the sentencing
5 of this and another matter be handled by your Honor.

6 THE COURT: Before whom is the other case?

7 MR. MORRISON: The other case is before Judge
8 Bonsal.

9 THE COURT: That is convenient in one sense. He
10 and I are right on the same floor, as you both know.

11 Let's let it go at that. If you will just give
12 me sufficient advance warning and that will enable me to
13 discuss it with Judge Bonsal and find out if that is
14 agreeable to him.

15 MR. MORRISON: I intend to address an application
16 to Judge Bonsal tomorrow morning and ask that he permit
17 the reference, if your Honor will accept it.

18 THE COURT: You can assure him if you are going
19 to do this, that that is satisfactory as far as I am con-
20 cerned, and I leave it up to him, then, to decide whether
21 or not he wants to do it. But it is certainly all right
22 with me if it is all right with him.

23 MR. MORRISON: Thank you, your Honor.

24 MR. WALKER: Thank you, your Honor.

25 MR. MORRISON: I understand the Government agrees to

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the continuation of bail?

MR. WALKER: Yes, your Honor.

THE COURT: Yes, bail will be continued.

MR. MORRISON: Thank you, your Honor.

...

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x 73 Cr. 654
74 Cr. 1226

UNITED STATES OF AMERICA, :

plaintiff, : SUR REPLY

- against - : AFFIDAVIT

GEORGE VAN AKEN, :

defendant. :

-----x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Michael W. O'Sullivan, being duly sworn, deposes and says:

Prior to making the within motion, I called the office of Peter Morrison, Esq. and spoke with a Richard Williamson, Esq. for the purpose of obtaining information in relation to the defendant's case and any agreement with the Government. A claim of attorney's work product was asserted, and Mr. Williamson informed me that due to an outstanding bill by the defendant that little to no cooperation would be extended.

Also, prior to making the motion, this office contacted David Brodsky, Esq. in order to ascertain the full contents of the plea bargaining terms. Mr. Brodsky agreed to inform your deponent and Edward J. Brady, Esq. of his recollections. It was suggested by Mr. Brodsky that a meeting be set up with John R. Wing, Esq., Chief of

Frauds Unit, United States Attorney's Office for the Southern District of New York. This was done after receiving no cooperation from Mr. Morrison's office and seeing a copy of a letter dated August 5, 1975 from Mr. Brodsky to Mr. Wing, which is attached hereto and marked Exhibit 6. The letter states:

"I recently received the enclosed papers from George Van Aken regarding his feeling that the Government did not fulfill its part of the agreement with him.

I cannot get involved in the middle of this dispute, as you can well understand. Part of Van Aken's feeling of being let down by the Office goes back to the original deal I made with him. However, I know that by turning it over to you, Van Aken's grievances will be analyzed and handled properly.

I am sending a copy of this letter to Van Aken, and I think you can expect to hear from him yourself."

After explaining to Mr. Wing that this office did not question the integrity of his office, I requested that a meeting, as per Mr. Brodsky's suggestion, be arraigned. Mr. Wing inquired whether our office intended to make a motion based upon either misrepresentations or improper promises. I informed him that we had taken it under advisement pending the outcome of a meeting with Mr. Brodsky. Mr. Wing said that unless our office waived such a motion no meeting could occur. I informed him that we could not and would not waive our client's constitutional rights. He then informed me to find out

the terms of the arrangement from our client, and in light of Exhibits 4, 5 and 6, we were compelled to make the within motion.

That there were notes of a March 5, 1973 date in the possession of the Government cannot be questioned. It cannot be questioned that these notes expressly state that the defendant's counsel could veto your Honor, even the Chief Judge of this Court or any other Judge, except Judge Tyler, from sitting in judgment of the defendant. Basically, the notes gave defendant's counsel an unlimited number of preemptory challenges, if Judge Tyler was not sitting. To my knowledge, this, if valid, is a constitutional innovation in the Southern District, and perhaps, every potential defendant should be appraised of his right to negotiate the same and have it reduced to writing.

Veto power or even the appearance thereof is heinous, improper, illegal and repugnant to our Judicial System. Actual veto power or even the appearance thereof when contained in the Government's own materials certainly lends heavy credence to the defendant's claim. It is significant to note the defendant testified to its existence, particularly in U.S. v. Baron, 74 Cr. 1226, Exhibit 3, where I have been informed by the defendant that Mr. Amorosa was the prosecutor and prepared him for Mr. Rooney's cross examination.

To a potential defendant seeking to avoid imprisonment, the granting of such a "privilege" is of great significance, and

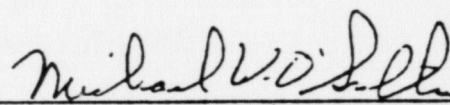
logically leads to certain repugnant inferences. Mr. Amorosa does not deny the source or genuiness of the March 5, 1973 notes. The notes are consistent with the defendant's claims. I am at a loss as to why the U.S. Attorney's Office refused to discuss this matter with Mr. Brady and myself, since we felt that we owed the Court a duty to fully investigate the matter before making a motion of this nature. I am also at a loss to comprehend how Mr. Amorosa, who presumably had enough access to his offices' files to send the defendant a copy of said notes and heard him testify, can take his present position of denying the promise of sentencing prior to Brodsky leaving the U.S. Attorney's Office and the existence of a promise that is in and of its very nature repugnant to the interests of Justice.

The portion of the motion directed to the sentencing relies solely on the record. It is a simple fact that Mr. Morrison, who, in referring to ". . . an application that I previously made to withdraw I feel that I may not be the most effective advocate for Mr. Van Aken . . ." Sentencing Transcript, page 2, lines 1-4, was denied the right to respond to Mr. Amorosa's inquiry as to omissions and misstatements. Unfortunately, we will never know what Mr. Morrison saw and raised objection to. Contrary to Mr. Amorosa's assertion that "To suggest, moreover, that it is conceivable that

Judge Bonsal sentenced defendant on inaccurate information is preposterous . . .", it is certainly conceivable since counsel was not permitted to be heard.

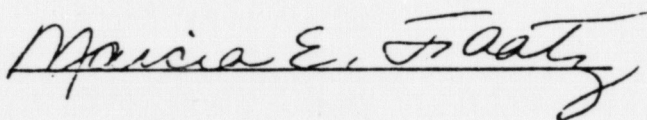
Attached hereto are: (1) a reply affidavit of the defendant; and (2) an affidavit of Melinda Van Aken, defendant's former wife, attesting to defendant's claims.

Wherefore, the defendant's motion must be granted on the papers submitted or this Honorable Court must order an evidentiary hearing.
dated: Thursday 4 December 75


MICHAEL W. O'SULLIVAN

Sworn to before me

this 4th day of December 1975



MARCIA E. FAATZ
Notary Public, State of New York
No. 31-4614895
Qualified in New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
Southern District of New York

United States of America,	:	
	:	
Plaintiff	:	73 CR 654
	:	74 CR 1226
- against -	:	
	:	
Geroge Van Aken,	:	<u>REPLY AFFIDAVIT</u>
	:	
Defendant	:	
	:	
	:	
	:	

George Van Aken, being duly sworn, deposes and says that:

The affidavit of Dominick Amarosa, Esquire, in opposition to my motion to vacate judgments of conviction and/or sentences is without merit.

An affidavit was produced by me supported by the best possible evidence. On at least two occasions I testified on behalf of the government, making reference to my veto power over the sentencing judge. The government accepted the text and tenor of my statements, therein affirming the terms of our agreement. (See also the transmittal letter by Mr. Amarosa to me and copies of the government's own notes of the plea bargaining agreement.)

The court's attention is directed to page 1 of the notes of March 5, 1973, attached to my moving papers and marked exhibit "5." The last five lines on this page state "All cases before Judge Tyler. If not before Tyler, then Morrison has veto over judge." This document came from the government's own file sent to me by Mr. Amarosa, see exhibit "4."

As to Mr. Amarosa's other claims that no agreement existed as to the time in which sentence was to be imposed, please see page 2 of

exhibit "5." The fourth, fifth and sixth lines from the bottom of page 2 clearly state "Sentencing prior to Brod's leaving - doesn't want sentence remain open."

Mr. Amorosa never denies that the notes are from his office files, and that they were prepared by the government's Joel Friedman or any other government agent, servant or employee who was present when the agreement was effectuated. This is the crux of my claim. These notes are completely and totally ignored in the government's responsive papers. I have testified to the existence of this agreement on at least two occasions in this court and was not challenged by the Assistant U. S. Attorney representing the government. Moreover, the notes are 3500 material accepted into evidence at several trials.

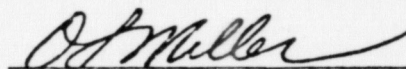
There is no affidavit submitted from (1) David Brodsky, former Assistant U. S. Attorney, Southern District of New York, presently with the New York State Moreland Commission; (2) Joel Friedman, formerly with the Organized Strike Force, Southern District of New York, and presently with the Organized Strike Force of Philadelphia; (3) Edward Levitt, Organized Strike Force, Southern District of New York, or (4) Any other government representative who was present at that meeting on March 5, 1973. Mr. Amorosa who furnished me with the notes was not present at the time the agreement was made. At the time the meeting took place on March 5, 1973, I was present at the U. S. Attorney's office. While I was not in the room at the time the negotiations took place, I was subsequently informed by Mr. Morrison and Mr. Brodsky that sentencing on all my cases would be before Judge Tyler. If sentencing was not before Judge Tyler, then both of these gentlemen informed me that Mr. Morrison had been granted veto power over any other judge of this court. In addition, I was informed that my sentencing would not remain open and that it would transpire prior to

David Brodsky's leaving the U. S. Attorney's office. Mr. Brodsky further informed me that he would speak for me on behalf of the government at my sentencing.

Mr. Morrison later informed me that the most important tenant of my agreement was the veto power he held over the judge.


GEORGE VAN AKEN

Sworn to before me this 2nd day of December 1975.



O. L. Miller, Case Manager
Authorized by the Act of July 7, 1955
to administer oaths (18 U.S.C. 4004)

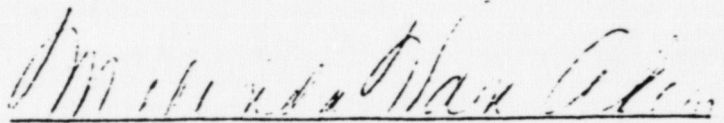
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x	73 Cr. 654
UNITED STATES OF AMERICA,	74 Cr. 1226
	:
plaintiff,	:
	:
- against -	AFFIDAVIT
	:
GEORGE VAN AKEN,	:
	:
defendant.	:
-----x	

STATE OF FLORIDA)
 : ss.:
COUNTY OF))

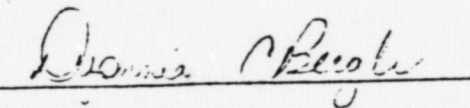
Melinda Van Aken, being duly sworn, deposes and says: I am the former wife of Goerge Van Aken, the defendant herein. In or about March or April 1973 I was present in the office of Peter Morrison, Esq., who represented my former husband in the criminal indictments against him in the United States District Court for the Southern District of New York. Mr. Morrison informed both me and the defendant that he had obtained a major concession from the Government. He explained that he had been granted veto power over the selection of any Judge of this court, other than Judge Tyler, whom he wanted all matters to appear before. This representation by Mr. Morrison led both of us to believe that either a light sentence or even no sentence of imprisonment would be imposed. This representation was a very significant factor in my former husband entering his

guilty pleas. At no time did Mr. Morrison inform me that the Government's promise either could not or would not be fulfilled.


MELINDA VAN AKEN

Sworn to before me

this 29 day of November 1975.


DYONNIA C. BEEGLE
Notary Public, State of Florida at Large
My Commission Expires May 29, 1979
Bonded through General Ins. Underwriters

STATE OF FLORIDA,
COUNTY OF MARTIN

ss.

I, Louise V. Isaacs, Clerk of the County of Martin and also Clerk of the Circuit Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That James C. Beagle

Beagle whose name is subscribed to the Certificate of the proof of acknowledgment of the annexed instrument and thereon written was, at the time of taking such proof and acknowledgment a Notary Public, in and for said County, residing therein, duly commissioned and sworn, and authorized by the laws of said State to take the acknowledgments and proofs of deeds or conveyances, for land tenements or hereditaments in said State, to be recorded therein. And further that I am well acquainted with the handwriting of such Notary Public, and verily believe that the Signature to said certificate of proof or acknowledgment is genuine.

I further Certify that the impression of the seal of a Notary Public is not required by law to be filed in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 2nd day of December 19 75

Louise V. Isaacs, Clerk of Circuit Court.

By Lois Barry
County Clerk.

-104A-

NEW YORK STATE MORELAND ACT COMMISSION
ON THE URBAN DEVELOPMENT CORPORATION
AND OTHER STATE FINANCING AGENCIES

810 SEVENTH AVENUE
NEW YORK, NEW YORK 10019
(212) 765-8555

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ROBERT LINDSAY, DIRECTOR,
ECONOMIC RESEARCH
BEATRICE B. COLLINS, STAFF DIRECTOR

PERSONAL AND NON-OFFICIAL

August 5, 1975

John R. Wing, Esq.
Assistant U. S. Attorney
U. S. Attorney's Office for the
Southern District of New York
St. Andrew's Plaza
New York, New York 10007

Re: George Van Aken

Dear Rusty:

I recently received the enclosed papers from George Van Aken regarding his feeling that the Government did not fulfill its part of the agreement with him.

I cannot get involved in the middle of this dispute, as you can well understand. Part of Van Aken's feeling of being let down by the Office goes back to the original deal I made with him. However, I know that by turning it over to you, Van Aken's grievances will be analyzed and handled properly.

I am sending a copy of this letter to Van Aken, and I think you can expect to hear from him yourself.

Cordially,

/s/ DMB

David M. Brodsky

cc: George Van Aken
P.O. Box 600
Eglin Air Force Base
Florida, 32542

STATE OF NEW YORK)
 :
COUNTY OF NEW YORK)

ss.:

Martha Zorrilla, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 544 West 157 Street, New York, New York 10032.

On Thursday 4 December 75 deponent served the within affidavits of George and Melinda Van upon Warden Aken attorney(s) for in this action, at P.O. Box 600 Eglin Air Force Base, Florida 32542 warden the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Martha Zorrilla
MARTHA ZORRILLA

Sworn to before me this
4 day of December 75.

Marcia E. Faatz
1
MARCIA E. FAATZ
Notary Public in and for the State of New York
No. 01-4014605
Qualified in New York County
Commission Expires March 30, 1977

STATE OF NEW YORK)
 :
COUNTY OF NEW YORK) ss.:

Martha Zorrilla, being duly sworn, deposes and
says: deponent is not a party to the action, is over 18 years of
age and resides at 544 West 157 Street, New York, New York 10032.

On Thursday 4 December 75 deponent served the
within affidavits of George and Melinda upon U.S. Probation Of-
 Van Aken
fice for the Southern District, New York
in this action, at U.S. Probation Office, United States District
Court; Southern District of New York, Foley Square, N.Y., N.Y. 100
the address designated by said officer for that purpose by de-
positing a true copy of same enclosed in a post-paid properly ad-
dressed wrapper, in an official depository under the exclusive car-
and custody of the United States Postal Service within the State of
New York.

Martha Zorrilla
MARTHA ZORRILLA

Sworn to before me this
4 day of December 75.

Marcia E. Faatz

MARCIA E. FAATZ
Notary Public, State of New York
No. 31-4614895
Qualified in New York County
Commission Expires March 30, 1977

STATE OF NEW YORK)
 :
COUNTY OF NEW YORK) ss.:

Martha Zorrilla, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 544 West 157 Street, New York, New York 10032.

On Thursday 4 December 75 deponent served the within sur reply affidavit with memo of law upon U.S. Probation Office for the Southern District; New York

in this action, at U.S. Probation Office, United States District Court, Southern District of New York, Foley Square, N.Y., N.Y. 10007 the address designated by said officer for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Martha Zorrilla
MARTHA ZORRILLA

Sworn to before me this
4 day of December 75.

Marcia E. Faatz
1

MARCIA E. FAATZ
Notary Public, State of New York
No. 31-4614895
Qualified in New York County
Commission Expires March 30, 1977

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

Martha Zorrilla, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at 544 West 157 Street, New York, New York 10032.

On Thursday 4 December 75 deponent served the within sur reply affidavit with memo of law upon Warden

attorney(s)-for

in this action, at P.O. Box 600 Eglin Air Force Base, Florida 32542 the address designated by said warden for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Martha Zorrilla
MARTHA ZORRILLA

Sworn to before me this

4 day of December 75.

Marcia E. Faatz

MARCIA E. FAATZ
Notary Public, State of New York
No. 31-4614855
Qualified in New York County
Commission Expires March 30, 1977

United States of America vs.

United States District Court

DEFENDANT

GEORGE C. VAN ALEN

Southern District of New York

DOCKET NO. 74 Cr. 1226

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 5 DAY 14 YEAR 1975

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Peter Morrison

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY.

FINDING & JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☐ GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing with others to violate Title 15, U.S. Code, §§77q(a), 77x, 78j(b), 78ff and Rule 10b-5 promulgated by the SEC and Title 18, U.S. Code, §1341. It was part of said conspiracy that the defendant unlawfully, wilfully and knowingly in the offer and sale of securities by use of interstate commerce and the mails employ schemes and artifices to defraud, make untrue statements etc. (Title 18, U.S. Code, §2381 pronounced. Because no sufficient cause in the opinion was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER

THREE (3) YEARS on count 1, to run concurrently with sentence imposed 73 Cr. 654.

and

Defendant is FINED \$10,000.00 on count 1. Fine is to be paid or the defendant is to stand committed until the fine is paid or he is otherwise discharged according to law.

SPECIAL CONDITIONS OF PROBATION

Counts 2 thru 18 are dismissed on motion of defendant's counsel with consent of the Government.

Defendant continued on present bail until May 28, 1975 at which time he is to surrender for service of sentence.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Marshal

CERTIFIED AS A TRUE COPY ON

THIS DATE

[Signature]

Nov. 76

109A

U.S. MARSHAL RETURN

I HEREBY CERTIFY AND RETURN THAT I PARTIALLY EXECUTED THIS JUDGMENT AND COMMITMENT BY ASSUMING CUSTODY OF WITHIN NAMED GEORGE C. VAN ALEN ON 5-31-75 FROM THE US. MARSHAL PLANT, FLORIDA, AND TRANSPORTED HIM TO THE CUSTODY OF PCI, TALLAHASSEE, FLORIDA ON 6-1-75 FOR FURTHER TRANSFER.

DONALD D. FURSHI
UNITED STATES MARSHAL
BY: Ron Prokup S/D Fla.

Ron Prokup

GENERAL
CONDITIONS
OF
PROBATION

Where probation has been ordered the defendant shall, during the period of probation, conduct himself as a law abiding, industrious citizen and observe all conditions of probation prescribed by the court. TO THE DEFENDANT - You shall

- (1) refrain from violation of any law (federal, state, and local) and get in touch immediately with your probation officer if arrested or questioned by a law enforcement officer;
- (2) associate only with law-abiding persons and maintain reasonable hours;
- (3) work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. (When out of work notify your probation officer at once, and consult him prior to job changes);
- (4) not leave the judicial district without permission of the probation officer;
- (5) notify your probation officer immediately of any change in your place of residence;
- (6) follow the probation officer's instructions and report as directed.

The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____

Defendant noted appeal on _____

Defendant released on _____

Mandate issued on _____

Defendant's appeal determined on _____

Defendant delivered on June 6, 1975 to FPC Eglin

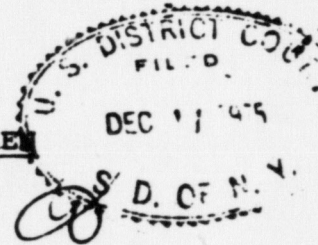
at Eglin AFB, Florida, the institution designated by the Attorney General, with a certified copy of the within Judgment and Commitment.

By

John E. Blackwell
United States Marshal
John P. Grubbs
Deputy Marshal

Endorsement

UNITED STATES OF AMERICA v. GEORGE VAN AKEN
73 Cr. 654 ✓
74 Cr. 1226 ✓



Petitioner, George Van Aken, moves pursuant to 28 U.S.C. §2255 for an order vacating and/or setting aside the judgments of conviction and sentence dated May 14, 1975 on the grounds that his constitutional rights were violated by unlawfully induced pleas of guilty and that he was denied due process and representation at the sentencing hearing.

Petitioner's motion refers specifically to an agreement allegedly made with the United States Attorney's Office for the Southern District of New York providing for a veto power over the sentencing judge if the judge were someone other than Judge Tyler, and for a sentencing date prior to the departure of Assistant United States Attorney David Brodsky from the U.S. Attorney's Office. Petitioner contends that his guilty pleas to Indictments 73 Cr. 654 and S 74 Cr. 1226 were unconstitutionally induced by these promises which went unfulfilled.

This Court has considered petitioner's claim of an agreement with the U.S. Attorney's Office on prior motions for reduction of sentence pursuant to Fed.R.Crim.P. 35. The Court is aware that petitioner was asked in open court by Judge Tyler on October 17, 1974, prior to his plea of guilty to Indictment 73 Cr. 654, of his understanding as to any agreement with the U.S. Attorney's Office. The record indicates petitioner understood the Government would not object to his being sentenced on both indictments before one District Judge but that no other agreements had been made.

Furthermore, the Court notes that at the time of sentencing on May 14, 1975, Judge Tyler had already resigned his position as United States District Judge for the Southern District of New York and that sentencing before Judge Tyler would have been impossible.

The Court also finds the record does not support petitioner's contentions that he was sentenced on inaccurate information. The Court was well aware of petitioner's cooperation with the Government and the facts surrounding petitioner's involvement in both cases at the time of sentencing.

Therefore, based upon the record in this case, the Court finds that petitioner's claims are without merit and that petitioner is entitled to no relief. Accordingly, petitioner's motion to vacate and/or set aside the judgments of conviction and sentence is denied.

It is so ordered.

Dated: New York, N.Y.
December 10, 1975

U. S. D. J.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x 73 Cr. 654 D B B
74 Cr. 1226

UNITED STATES OF AMERICA, :

plaintiff, :

- against - :

GEORGE VAN AKEN, :

defendant. :

Dec 19, 1975

-----x

Notice is hereby given that George Van Aken, defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order, dated December 10, 1975, of the Hon. Judge Dudley B. Bonsal denying petitioner's motion pursuant to 28 U.S.C. §2255 for an order vacation and/or setting aside the judgments of conviction and sentence, dated May 14, 1975, docketed December 12, 1975, on the grounds that his constitutional rights were violated by unlawfully induced pleas of guilty and that he was denied due process and representation at the sentencing hearing, entered in this action on the 11th day of December 1975.

dated: in New York
on Friday 19 December 1975

Yours, etc.

Brady, Tarpey, Downey, Hoey, P.C.

by

Michael W. O'Sullivan
Michael W. O'Sullivan
Attorney for Defendant
George Van Aken

84 William Street
New York, New York 10038
212-269-1010

To: Office of the U.S. Attorney
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

George Van Aken
P. O. Box 600
Federal Prison Camp
Eglin Air Base, Florida 32542

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x 73 Cr. 654
74 Cr. 1226 D.B.B.
UNITED STATES OF AMERICA, :
 :
 :
 plaintiff, :
 :
 - against - :
 :
 GEORGE VAN AKEN, :
 :
 defendant. :
-----x

NOTICE OF APPEAL

Dec 19, 1975

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dated: in New York
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Yours, etc.

Brady, Tarpey, Downey, Hoey, P.C.

by

Michael W. O'Sullivan
Michael W. O'Sullivan
Attorney for Defendant
George Van Aken

84 William Street
New York, New York 10038
212-269-1010

To: Office of the U.S. Attorney
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

George Van Aken
P. O. Box 600
Federal Prison Camp
Eglin Air Base, Florida 32542

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 3rd day of February, one thousand nine hundred and seventy-six.

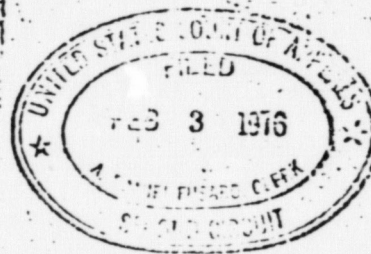
United States of America,
Plaintiff-Appellee,

v.

William I. Strub, Ramon N. D'Onofrio,
George C. Van Aken, Alfred Herbert,
Peter B. Rosenthal,

Defendants,

George C. Van Aken,
Defendant-Appellant.



75-1434

It is hereby ordered that the motion made herein by counsel for the

George Van Aken

appellant

appellee

xxxxxx

xxxxxx

by motion for summary judgment dated January 28, 1976 to consolidate the appeal herein with the appeal in Docket No. 75-1434

be and it hereby is ~~anted~~ ~~denied~~

GRANTED.

~~xxxxxx~~

Murray I. Gurfein
MURRAY I. GURFEIN Circuit Judges

Due and timely service of *ONE* copies
of the within *APPENDIX* is hereby
admitted this *157* day of *MARCH* 197*6*

.....
Attorney for *APPELLANT*

